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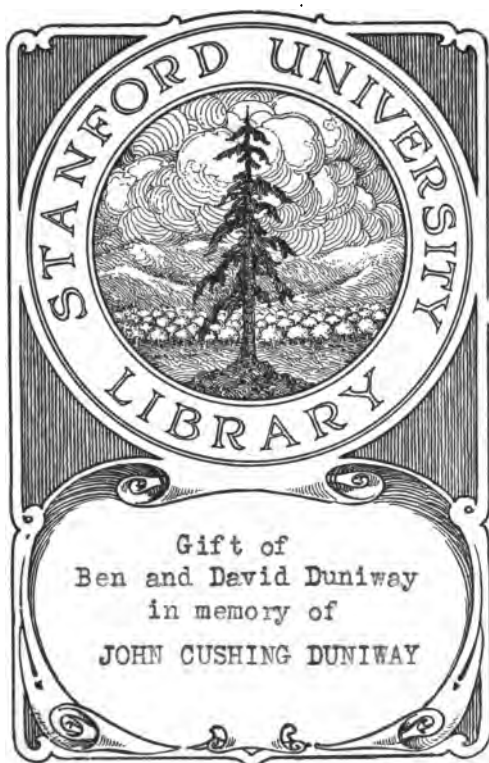
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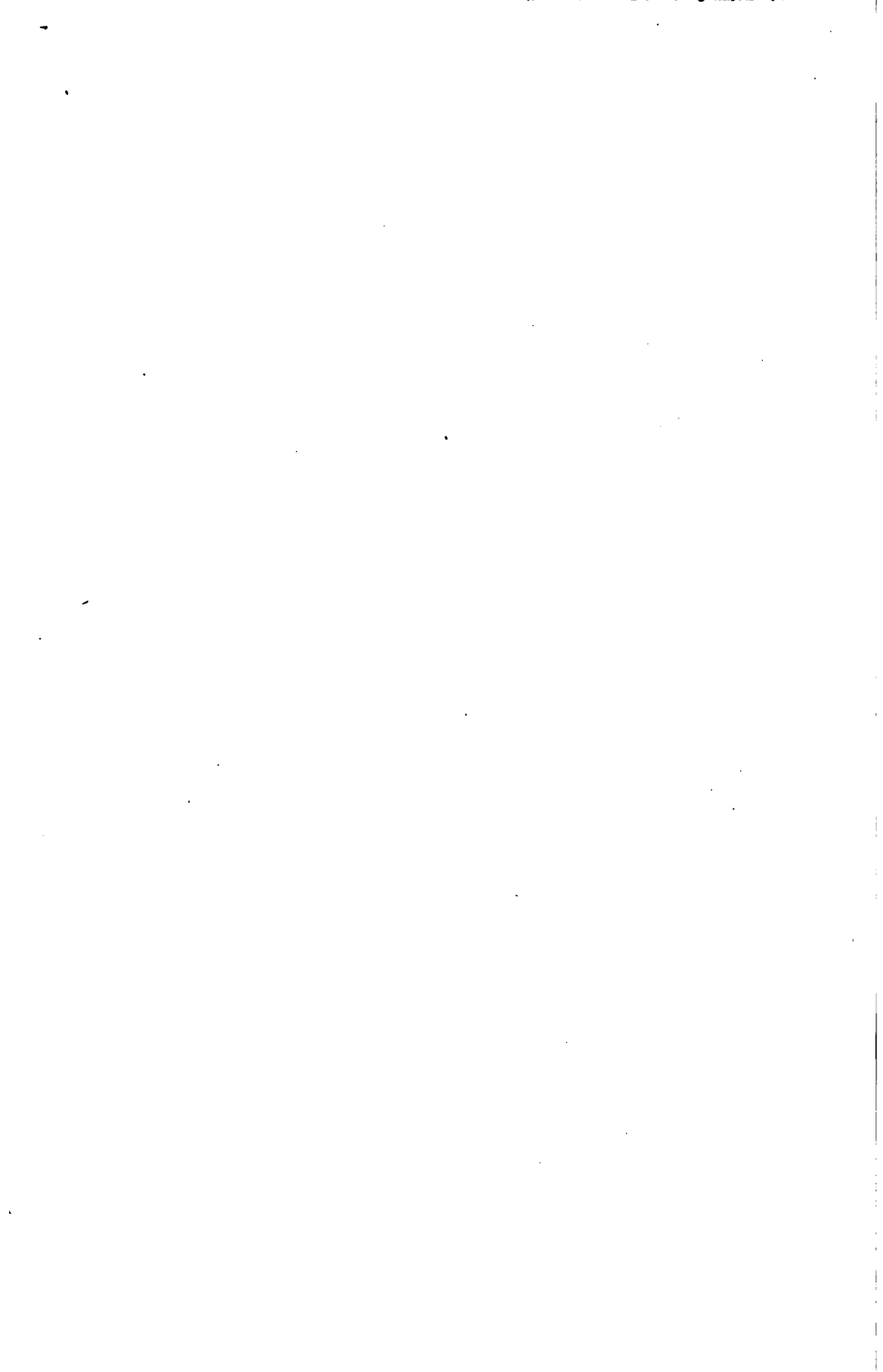
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**C. A. DUNIWAY,**  
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CASES  
ON  
INTERNATIONAL LAW  
DURING  
THE CHINO-JAPANESE WAR

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CASES

ON

INTERNATIONAL LAW

DURING

THE CHINO-JAPANESE WAR

BY

SAKUYÉ TAKAHASHI

PROFESSOR OF LAW IN THE IMPERIAL NAVAL STAFF COLLEGE OF JAPAN;  
LEGAL ADVISER TO THE ADMIRAL COMMANDING THE JAPANESE SQUADRON DURING THE  
CHINO-JAPANESE WAR; AND

COMPILER OF THE LEGAL PORTION OF THE OFFICIAL HISTORY OF THE WAR.

WITH A PREFACE BY

PROFESSOR T. E. HOLLAND, D.C.L.

AND

AN INTRODUCTION BY

PROFESSOR J. WESTLAKE, Q.C., LL.D.

CAMBRIDGE;  
AT THE UNIVERSITY PRESS.

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## PREFACE.

THE author of this book, my friend Professor Takahashi, thinks that a few words of introduction from an Oxford colleague may commend it to English readers. I have therefore great pleasure in saying how well the work appears to me to deserve the attention of all who are interested either in International Law or in the development of Japan.

Mr Takahashi has exceptional claims to speak with authority upon the subject of which he treats. Shortly after becoming a Professor in the Naval College at Tokyo, he was directed to join the *Matsu-shima*, as legal adviser to the Admiral commanding the Japanese fleet, and remained on board the flag-ship nearly to the end of the war with China. He was subsequently employed in the compilation of the official history of the war, and is now, at the request of his Government, spending three years in Europe, in order to carry further his studies in International Law, before returning to take up his appointment as Professor of that subject in one of the Japanese Universities.

The war was conducted on the part of the Japanese with an anxious desire that their forces should conform to the highest standards of loyalty and humanity ; and it was to secure this object that, while a law Professor at the Military College, Mr Ariga, was attached to the troops on land, Mr Takahashi was sent from the Naval College to advise the fleet. Under his guidance, great pains were taken to observe in all questions of naval capture the best traditions of European Prize Courts. On this topic much light is thrown by Mr Takahashi's introductory chapter. The treatment of questions of detail, which occupies the remainder of the book, is no less interesting. Nearly a hundred vessels were visited by the Japanese cruisers, although only one of them was actually taken in to the Prize Court at Sasebo. Several new questions were raised, and equitably dealt with. Mr Takahashi's narrative is always clear, and his arguments are, as a rule, convincing. The value of the work is greatly increased by the official documents—proclamations, reports, opinions, conventions and regulations—with which its statements are copiously illustrated.

T. E. HOLLAND.

OXFORD.

20 *January*, 1899.

## THE AUTHOR'S PREFACE.

**D**URING the Chino-Japanese war of 1894—95, Japan acted consistently with the law of nations in carrying on hostilities, in maintaining her own rights and in discharging her duties toward neutrals. As a consequence many cases occurred which are well worth taking as precedents in International Law. In respect of maritime International Law alone, nearly one hundred instances were noted which presented questions of a more or less interesting nature. At present however only a few of these instances are known to the world. It seems a matter for regret that they should be left any longer in obscurity.

Fortunately the present author has had favourable opportunities for observing the various incidents of the trouble with China, and at the close of hostilities he was commissioned to compile the official history of all legal affairs connected with the war. He has made careful inquiries into official reports, archives and correspondence, from various sources, and has found them agree with his own experiences as an actual eye-witness.

At the end of 1897 he was ordered to come to Europe to prosecute inquiries into the law of nations, and he took advantage of the occasion to bring the above legal questions before the notice of the leading lawyers of the West.

In fact the author has risked his life in collecting material, and has spent three years in substantiating the real facts by authoritative documents, and one year in composing the present work.

The object of the work is to make a definite contribution to the collection of cases on International Law.

The arrangement adopted in the book is as follows :

In Part I the author has treated the affairs which relate to visit, search and detention—in short prize affairs ; and in Part II he has described and discussed miscellaneous affairs which have a bearing upon the naval operations of Japan.

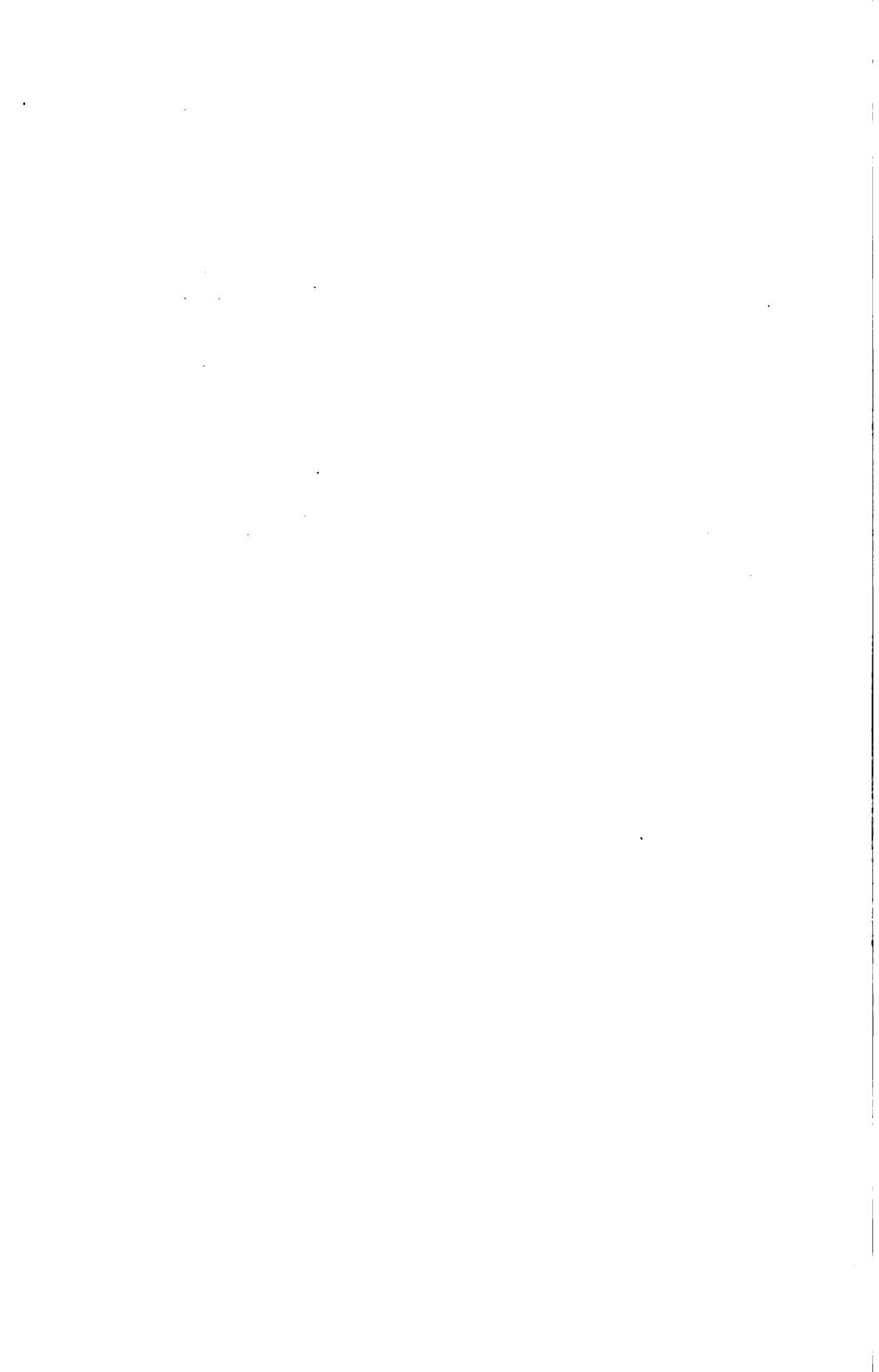
Only such matters as have reference to maritime International Law are incorporated in this book ; everything pertaining to the Japanese army is omitted, as fortunately they have been fully treated by the author's friend Mr Ariga in his work *La guerre Sino-Japonaise au point de vue du droit international*.

The author is very much indebted to Professor Westlake, Q.C., LL.D., for his great kindness in carefully and repeatedly perusing the first draft, the proof sheets and revises, and in giving him the most accurate and valuable advice both on legal and on literary points. Moreover he has kindly honoured the author in contributing to this work a most valuable

introduction, in which he has discussed the more complicated questions of law.

The author is under a similar obligation to Professor Holland, D.C.L., who has been so very kind as to read the proof sheets and has offered many highly important suggestions. In addition he has greatly favoured the author by writing a most valuable preface to the work.

As to the English, the author will not pass in silence the fact that Messrs E. S. Chalk, B.A., Oxon., and Arthur H. T. Muller, M.A., Cantab., who excel in their own literature, helped him in making his style more idiomatic.



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# INTRODUCTION

BY

## PROFESSOR WESTLAKE, Q.C.

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### No. I.

### PREFATORY.

IT is often asked whether and how far the international law which is recognised between the states of Christendom applies between them and Mahometan or other oriental states. For the purpose of the answer it is desirable to distinguish two departments of international law.

On the one hand there are the rules for the conduct of states which are prior to treaties though treaties sometimes enforce them, such as those of good faith and diplomatic intercourse, and those relating to the title to territory, to war or neutrality. These rules, according to the memorable teaching of Suarez, have either resulted directly from our ideas of justice or natural law, or have been adopted by habitual conduct as being useful and agreeable to nature though not altogether necessary. But even those for which only the latter origin can be claimed have become so bound up with current European morals that for our present purpose nothing turns on the difference. European states are obliged by their self-respect to observe in their dealings with oriental states, without regard to reciprocity, all the rules which may be described as prior to treaties, or at least to profess to do

so; and they require that oriental states shall observe them towards them, often inflicting severe punishment for any failure in that regard.

On the other hand there are institutions, such as extradition and consular jurisdiction, which at least in their ordinary practice depend on treaties, although they may embody rights prior to treaties which might be asserted in extreme cases. These institutions are necessarily related to the social condition of particular states. They may, like the extradition of criminals, demand great confidence in the social condition of the state which is entitled under them to make certain demands. Or they may, like the consular jurisdiction over subjects in foreign territory, exhibit a want of confidence in the social condition of the state on which they are imposed. Consequently the international law which prevails between European and oriental states is very different, with respect to the presence or absence of such institutions, from that which prevails between European states.

Japan presents a rare and interesting example of the passage of a state from the oriental to the European class. By virtue of treaties already concluded with the leading Christian states of Europe and America she will shortly be freed from the institution of consular jurisdiction, and in her recent war with China she displayed both the disposition and in the main the ability to observe western rules concerning war and neutrality.

This book of my friend Professor Takahashi, who followed that war as adviser of the Japanese admiral in matters of international law, recounts the proceedings in it which bore on his science. As such it is a valuable monument of the history of the Far East, and the details with which it is enriched are the best testimony to the care with which Japan entered on a line of operations, naval and judicial, quite novel to her, while they furnish the student with an unusual opportunity of realizing the operation of the law which is often presented to him only in the form of generalities.

**No. II.****CONTINUOUS VOYAGES IN RELATION TO CONTRABAND OF WAR: THE AFFAIR OF THE *GAELIC* IN THE CHINO-JAPANESE WAR<sup>1</sup>.**

Dear Professor TAKAHASHI,

I enclose the note on the *Gaelic* which I should be glad to contribute to your book. You will see that I have made it the occasion of a somewhat detailed examination of the doctrine of continuous voyages, which I was all the more desirous of doing, because that doctrine has never yet been thoroughly examined by any English writer.... You will see that, at the end of the note, I have justified the search of the *Gaelic* on a ground independent of any position on contraband, etc....

Believe me to be yours sincerely,

J. WESTLAKE.

(*Enclosure.*)

The *Gaelic* was a mail steamer which called at Yokohama in Japan in the regular course of her voyage from the United States port of San Francisco to the British port of Hong Kong. Before her arrival at Yokohama the Japanese Government had received information that there were on board of her as passengers three persons of the description of contraband or analogues of contraband, seeking Chinese service and carrying to China some material intended to destroy Japanese ships. At Yokohama the Japanese Government caused the *Gaelic* to be searched for the persons and material. Before the search was finished it was discovered that the persons had left the ship. In fact, notwithstanding that at San Francisco they had taken passages by the *Gaelic* for Hong Kong, they proceeded from Japan in another vessel to the Chinese port

<sup>1</sup> See Part I. Chap. II. pp. 52—63.

of Shanghai. But the search was continued, on the supposition that they might have left some of the material behind.

The British authorities in Japan objected to this proceeding on the ground that the *Gaelic* had no hostile destination, Nagasaki in Japan being the only port at which she would call in the regular course between Yokohama and Hong Kong: it was true that the vessels of the company to which she belonged often call at the Chinese port of Amoy, but there was no proof of any intention to do so on that voyage. And they contended that the neutral destination of the ship precluded search, it being immaterial whether anything on board her had a hostile destination ulterior to that of the ship. On the other hand the correctness of the proceedings was maintained, on the ground both of the probability that the *Gaelic* might call at Amoy, and of the doctrine of continuous voyages as applicable in case contraband persons or goods on board her were destined for China even by way of Hong Kong. These opposing arguments call first for an examination of the doctrine of continuous voyages as affecting (1) goods contraband of war, (2) persons contraband of war, or analogues of such contraband, and afterwards for an examination of the question from another point of view which will appear.

I. *The doctrine of continuous voyages as affecting goods.*

Goods on board a ship destined to a neutral port may be consigned to purchasers in that port or to agents who are to offer them for sale there, in either of which cases what further becomes of them will depend on the consignee purchasers or on the purchasers from the agents. Such goods before arriving at the neutral port have only a neutral destination; on arriving there they are, in Lord Stowell's language, imported into the common stock of the country; if they ultimately find their way to a belligerent port or to a belligerent army or navy it will be in consequence of a new destination given them, and this notwithstanding that the neutral port may be a well-known market for the belligerent in question to seek supplies in, and that the goods may

notoriously have been attracted to it by the existence of such a market. The consignors of the goods to the neutral port may have had an expectation that they would reach the belligerent but not an intention to that effect, for a person can form an intention only about his own acts, and a belligerent destination was to be impressed on the goods, if at all, by other persons.

On the other hand goods on board a ship destined to a neutral port may be under orders from their owners to be forwarded thence to a belligerent port, army or navy, either by a further voyage of the same ship, or by transshipment, or even by land carriage. Such goods are to reach the belligerent without the intervention of a new commercial transaction, in pursuance of the intention formed with regard to them by the persons who are their owners during the voyage to the neutral port. Therefore even during that voyage they have a belligerent destination, although the ship which carries them may have only a neutral one.

In the case first put it is agreed that the goods, though of the nature of contraband of war, and the ship knowingly carrying them, are not subject to capture during the voyage to the neutral port. In the case secondly put the doctrine of continuous voyages is that the goods and the knowingly guilty ship are capturable during that voyage. That doctrine regards goods as being contraband of war when an enemy destination is combined with the necessary character of the goods, and it regards the offence of carrying contraband of war as being committed by a ship which is knowingly engaged in any part of the carriage of the goods to their belligerent destination. Those who deny the doctrine of continuous voyages can still hold that even in the second case the goods and the knowingly guilty ship are liable before reaching the neutral port if that port is only to be a port of call, the ultimate destination of the ship as well as of the goods being a belligerent one, but they deny that a further intended carriage by transshipment or by land can be united with the voyage to the neutral port so as to form one carriage to a belligerent destination, and make the goods and the



knowingly guilty ship liable during the first part of it. They require a belligerent destination both of the goods and of the ship carrying them.

The doctrine of continuous voyages does not apply to breach of blockade. In contraband of war the root of the offence is in the nature of the aid supplied to a belligerent, that is in the goods, and the connexion of the ship with the offence must be proved. In breach of blockade the root of the offence is in the attempt to enter into prohibited communication with a belligerent coast, that is in the ship, and the connexion of the goods with the offence must be proved. The ship indeed, according to British and United States principles, commits the offence as soon as she sails on a blockade-running expedition, notwithstanding that it may be intended to interpose a neutral port of call before she reaches the blockaded coast which is her ultimate destination; but a ship of which the only destination is to a neutral port cannot be connected with the blockade-runner into which her cargo is transhipped in that port. The cargo cannot be a source of infection before an offence of blockade-running from which its own guilt may be derived is committed. If, according to the French practice, the offence is committed only by the attempt to cross the very line of blockade, or by proceeding in order to do so after receiving a notification from a belligerent cruiser, the doctrine of continuous voyages cannot so much as be suggested in connexion with the case.

It was in connexion with the so-called rule of the war of 1756, namely that neutrals will not be allowed to engage in time of war in the trade between the enemy and his colonies from which they are excluded in time of peace, that Sir William Scott and Sir William Grant had occasion to establish the doctrine that goods must be considered as undergoing a continuous carriage from port A to port C, notwithstanding a call at port B where, for the sake of an appearance of importation, they are landed, duty is paid on them, and they are reshipped: the *Maria*, 5 C. Rob. 368; the *William*, 5 C. Rob. 385. The former judge is sometimes quoted as if in the case of the *Imina* he had condemned the

application of a corresponding principle to the carriage of contraband of war. What however he said, namely that the contraband goods must be taken 'in the actual prosecution' of a voyage to the enemy's port, was said with reference to the point that the proceeds cannot be taken on the return voyage, and he was not thinking of the exact circumstances in which an enemy destination will be held to have been actual: 3 C. Rob. 168. That he did not regard a neutral destination of the ship as conclusive against a condemnation of contraband goods on board her appears in the *Rapid*, Edwards 228, which was the case of a ship carrying a despatch addressed to a hostile minister. 'It is to be observed,' remarked Sir W. Scott, 'that where the commencement of the voyage is in a neutral country and it is to terminate at a neutral port, or as in this instance at a port to which though not neutral an open trade is allowed, in such a case there is less to excite his (the master's) vigilance, and therefore it may be proper to make some allowance for any imposition which may be practised upon him.' This distinctly gave it to be understood that the carriage of despatches, which is at least analogous to that of contraband goods if the despatches, being things and not persons, do not fall simply within the description of goods, would not necessarily be held to be innocent because the voyage of the ship was to terminate at a neutral port. In the case of the *Ocean*, 3 C. Rob. 297, Sir W. Scott held that communication by sea with a port not blockaded is not made guilty by internal communication between that port and a blockaded one, by land or inland navigation. But since we have seen that the doctrine of continuous voyages does not apply to breach of blockade, that decision does not tell against its validity with regard to the carriage of contraband.

The doctrine of continuous voyages sprang into importance and was maintained during the Civil War in the United States, but, unfortunately from the point of view of science, the carriage of contraband was then generally connected with blockade-running, and consequently the judgments in the cases of the *Stephen Hart*, the *Springbok* and the *Peterhoff*

fail to distinguish between the two sets of conditions with the desirable clearness. However, in the case of the *Peterhoff* blockade, according to Sir W. Scott's doctrine in the *Ocean*, was out of the question, because the ship's destination was to the Mexican port of Matamoras, from which the communication with the Confederate territory was to be made by land or inland navigation. And here the Supreme Court on appeal, while not expressly disapproving the expressions pointing to an application of the doctrine to blockade which had been used in the district court, put the matter as to contraband in words which deserve to be quoted. 'It is true that these goods if really intended for sale in the market of Matamoras would be free of liability, for contraband may be transported by neutrals to a neutral port if intended to make part of its general stock in trade. But there is nothing in the case which tends to convince us that such was their real destination, while all the circumstances indicate that these articles were destined for the use of the rebel forces then occupying Brownsville and other places in the vicinity.' (5 Wallace 59.)

The case of the *Peterhoff* had to be more or less considered by the English Court of Common Pleas in *Hobbs v. Henning*, an action brought by the owners of the condemned goods against the underwriters, the judgment in which has been represented, I think erroneously, as repudiating the doctrine of continuous voyages. In pronouncing on the demurrer to the seventh plea the Court held that the allegation that the goods were shipped 'for the purpose of being sent to and imported into a port in a state engaged in hostilities with the United States' was consistent with the supposition, which we know was not in fact made by the American judges, that the plaintiff shipped the goods for sale at Matamoras, expecting to find there persons who would buy them on behalf of the Confederate States. And cases were quoted on the distinction between the expectation that goods will be applied to an illegal use and participation in an attempt to apply them to such use. What was the object of this, if it was thought that the condemnation would have been wrong even supposing

that the goods were not intended for sale at Matamoras but for further transit to the Confederates? It is true that Sir W. Scott's language in the *Imina* was quoted as proving that the voyage must be to an enemy's port, but the true mind of that judge has been shown above both from the context of the *Imina* and from his language in the *Rapid*. See 17 C. B., N. S., pp. 819, 820. The eighth plea was the United States sentence, and was disallowed for the reason that the ground of condemnation did not sufficiently appear, and that the sentence would bear the interpretation that the *Peterhoff* 'was bound to Matamoras, not for the purpose of commerce with the inhabitants thereof, but for the purpose of such a sale (the italics are mine) or transfer there as that the Confederates should get the use of the cargo.' 'We have no jurisdiction,' the Court said, 'to enquire into, nor are we at all considering, the validity of the legal grounds of the judgment': p. 825. On the whole then no positive opinion is to be found in *Hobbs v. Henning* on the doctrine of continuous voyages, and the tendency of the Court's observations is not unfavourable to it.

Among the rules on contraband of war adopted by the Institute of International Law at its Venice meeting in 1896 is one which recognizes the doctrine of continuous voyages as here laid down. 'La destination pour l'ennemi est présumée lorsque le transport va à l'un de ses ports, ou bien à un port neutre qui, d'après des preuves évidentes et de fait incontestable, n'est qu'une étape pour l'ennemi comme but final de la même opération commerciale': *Annuaire de l'Institut de Droit International*, vol. 15, p. 231<sup>1</sup>.

## II. *Whether the doctrine of continuous voyages affects persons.*

When a person whose character would stamp him as contraband or an analogue of contraband is a passenger on board a ship bound for a neutral port and having no ulterior

<sup>1</sup> 'A destination for the enemy is presumed when the carriage of the goods is directed towards one of his ports, or towards a neutral port which, by evident proofs arising from incontestable facts, is only a stage in a carriage to the enemy as the final object of the same commercial transaction.'

destination, but intends on arriving there to proceed to a belligerent port, there can be no closer connexion between the two parts of his journey than that he should hold a through ticket to the belligerent port, issued under a system of through booking by the owners of the ship in which he is. Even in that case however there is this difference between a person and goods or despatches, that the person cannot be forwarded like a thing. The through ticket is a facility given him for continuing his journey, but it must depend on him whether he will use it: he may change his intention and either continue his journey in some other way not having any unlawful connexion with the first part of it, or not continue it at all. Even therefore in the case of his holding a through ticket, and *a fortiori* where the passenger is only booked to a neutral port, he cannot be constructively bound for a belligerent destination until he is actually bound for one. There must for such destination be a determination of his own which during the first part of his journey inevitably remains contingent, and which is therefore analogous to the new determination which may be given in the neutral port as to the employment of goods which have found a market there. In the mean time the owners of the first ship may have an expectation as to his acts, analogous to that which they may have as to the ultimate destination of goods seeking a market in the neutral port, but they can have no intention as to his acts, that is no state of mind analogous to that of the owner of goods who ships them for an immediate neutral destination in order that they may be forwarded thence to a belligerent destination.

If the above view be correct it will follow that the doctrine of continuous voyages cannot be applied to the carriage of persons, and such is the conclusion to which I come. No objection to that view can be founded on cases of which the type is the *Orozembo*, 6 C. Rob. 430, where the persons are not taken on board in the ordinary course as passengers, but in pursuance of a special contract placing or virtually placing the ship in belligerent service. It may well be that in a case of that class the ship is only to convey the

persons as far as a neutral port from which an ulterior carriage of them is to commence. She will not be the less capturable on her voyage to that port, not however on account of the ulterior carriage contemplated but on account of the service in which she is held to be actually engaged.

On the ground here taken up the famous international difficulty which arose out of the incident of the *Trent* receives a short and as I submit a satisfactory solution. It becomes unnecessary to discuss whether the character of Messieurs Mason and Slidell ranked them with contraband, whether they could be taken out of the ship without bringing the ship in for condemnation, or whether a destination to a neutral port precludes all further question in the case of contraband goods. It is not even necessary to point out that at St Thomas, for which the *Trent* was bound, Messieurs Mason and Slidell were to tranship for another neutral destination, England. That the *Trent's* own destination, St Thomas, was neutral, and that a neutral destination of the ship is conclusive in the case of passengers taken on board her in the regular course, as were Messieurs Mason and Slidell, is enough to close the controversy. I do not deny that if the *Trent's* own destination had been to England, merely calling at St Thomas, it would have been the neutrality of England and not that of St Thomas which would have been conclusive as to passengers on board her with tickets for England.

### III. *Application to the case of the Gaelic.*

On the principles here adopted the search of the *Gaelic* by the Japanese authorities at Yokohama cannot be justified by the doctrine relating to contraband of war. The ship was not constructively in hostile service like the *Orozembo*. Her destination was the neutral one of Hong Kong, and the passengers who might be considered as contraband were not booked beyond Hong Kong, if that would have been material. It may be admitted that packages containing explosives or machinery for causing explosion, if carried by them as part

of their personal luggage and therefore not appearing separately in the ship's manifest, must be regarded for the purpose of belligerent rights as in course of carriage by the ship to the destination for which the passengers were booked. If that destination had been hostile, the luggage of passengers might on proper grounds of suspicion have been searched for such contraband articles, as well after it had been left behind as while its owners were in the ship with it, and the ship might on proper grounds of suspicion have been searched in order to ascertain whether any such luggage had been left behind. But these reasons did not apply in the case of the *Gaelic's* passengers, because there could be no ground for attributing to their personal luggage any destination ulterior to their own. The defence, if any, of the Japanese proceeding must be sought elsewhere than in the rights of belligerents against neutrals on the high seas.

It appears to me that a sufficient defence is not far to seek. The *Gaelic* was not searched on the high seas but in the waters of the belligerent who searched her. Passengers by her on their way to the enemy with proposals for destroying Japanese ships and means for giving effect to those proposals were self-constituted enemies, although their nationality was neutral. A state has the right to protect itself on its own soil and in its own waters against all enemies, whether they are such by their nationality or by their free choice, and it would be absurd to contend that any other state can make the nationality of its ships or of its subjects a ground for interfering with the exercise of that right.

Lastly, the right of self-protection must cover all reasonable measures taken for that end in circumstances of reasonable suspicion. I think therefore that the search of the *Gaelic*, and the continuance of that search after the suspected persons had left her in order to ascertain whether they had left materials or machinery for destructive explosions behind them, were justifiable against every foreign power as war measures. It is another question whether they were justifiable under Japanese law as affecting persons and things within Japanese territory or territorial waters. Even if they

were not so, there is probably no government which would hesitate to supply by its own action an evident gap in the domestic legislation, and to seek an indemnity from the legislature in due course. But with that point a foreign power would have no concern.

### No. III.

#### CAMERON'S CASE.

*Extract from a letter from Professor Westlake to  
Professor Takahashi.*

I will now come to the more weighty matter of Cameron's Case. Admiral Ting's letter, which you give textually on p. 127, is so brief that in my judgment it cannot be understood as intended to provide for all cases. I think that nothing more was in the writer's mind than that no one should be ill-treated because he was an enemy or had been in the enemy's service, and that the letter would be strained too far if Admiral Ito's assent to it was interpreted as exempting any one from consequences which he had incurred otherwise than by the mere enemy character of his nationality or of his service.

Now Cameron had incurred a liability independent of the mere enemy character of his service. He was under arrest at Kobé as a person rendering to China services hostile to Japan, to all intents and purposes therefore as a prisoner of war. He was released on parole and he broke his parole, and in my opinion the terms of surrender at Wei-hai-wei did not give him a right to immunity from the consequences of that act of his. But what were those consequences? Not death, for a captor is allowed by international law to use no greater severity towards his prisoner than is necessary to defeat or check attempts to escape. A prisoner in the act of escaping may be shot if his escape cannot otherwise be prevented. If attempts to escape are very frequent among the body of prisoners, the captor may even denounce the



penalty of death against those who shall make such attempts. But Cameron was in neither of those cases. He was not running away, and the penalty of death had not been denounced against any category of prisoners in which he was comprised. His breach of parole only brought him back into the same condition in which he was at Kobé before he gave his parole, with an additional right for the Japanese Government to use such reasonable severity towards him as might be an example to others. It would in my opinion have been quite proper for Cameron not only to be detained in confinement till the peace, but even during that time to be subjected to a rigorous imprisonment as a criminal.

I am not of opinion that against such a rigorous imprisonment Cameron could have justly pleaded that a foreigner's breaking a parole given on oath was not a criminal offence by the law of Japan. I do not see any way in which the law of Japan, as that of a country, could be made the measure of his case. He was not subject to it by nationality, and his wrongful act was not committed in Japanese territory, where he gave his parole, but in China, where he broke it. He was passing through Japan when taken at Kobé in the course of what may be described as a hostile proceeding—a hostile expedition, if the word "expedition" can be used of the acts of a single person—but without having done in Japan any of the hostile acts which he contemplated. He was a self-constituted enemy, subject as such to the laws of war, so that, if he had not given his parole, his detention at Kobe would have been under the laws of war and not under the law of Japan. Having given his parole and broken it, he was still under the laws of war and not under the law of Japan.

Believe me to be yours sincerely,

J. WESTLAKE.

CASES  
ON  
INTERNATIONAL LAW  
DURING  
THE CHINO-JAPANESE WAR.

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INTRODUCTORY CHAPTER.

**Sect. I. The Law-abiding Spirit of Japan in carrying on Hostilities.**

A law-abiding spirit, especially in war, has been from ancient times, as history shows, a characteristic of Japan<sup>1</sup>.

Thirty years have elapsed since this characteristic, combined with eagerness to introduce European civilization, induced Japan to issue very stringent and systematic military laws, instructions and acts. More recently she, for similar reasons, became a party to international conventions and declarations with the most benevolent intentions.

Thus on the 15th of November, 1886, she became one of the signatories to the Geneva Convention of 1864, and in the next year the minister of the

<sup>1</sup> The details may be found in my essay on "The Development of the Japanese idea of International Law," in Nos. 7, 8, 10 of *Hansei Zasshi*, 1897, and No. 2 of the same, 1898.

Japanese military department issued instructions, requiring every one in the military service to be well acquainted with the details of the Convention. On the 19th of March, 1887, she also became one of the signatories to the Declaration of Paris of 1856.

Hence, without referring to ancient history, it is evident that the Japanese nation laid stress upon the law of war, even before they were confronted with such an emergency as the conflict with China.

But once fully in face of that emergency, they displayed in every particular their law-abiding characteristic in carrying on war. In fact, it was the earnest intention of the Japanese Emperor to do nothing inconsistent with International Law, and accordingly we find the following paragraph in the Imperial Rescript :

“We command each and all of our competent authorities, in obedience to our wish and with a view to the attainment of that aim, to carry on hostilities by sea and land with all means at their disposal, *consistently with the law of nations.*”

This document served as a foundation-stone for the whole elaborate system on which Japan carried on hostilities. Soon after this declaration, the Emperor issued an ordinance concerning the protection of the Chinese people in Japan<sup>1</sup>.

The above are but typical instances of the Japanese law-abiding spirit, displayed at the beginning of the war.

It must be noticed that this spirit showed itself in two ways, one being lawfulness against the enemy, and the other against neutrals. We will now consider the former, and in the third section we will deal with the latter.

<sup>1</sup> See Appendix III.

During the whole of the war, Japan acted with great generosity to China. China is a signatory neither of the Geneva Convention nor of the Declaration of Paris. She was very barbarous in her methods of carrying on hostilities. She declared that Japanese vessels should be broken up, and even offered a large reward for the head of a Japanese general. She also detained neutral merchant vessels by means of privateers<sup>1</sup>, killed prisoners, and sometimes hacked them to pieces. More than this, she killed not only combatants, but also non-combatants who remained in China after the outbreak of war<sup>2</sup>.

So barbarous was the conduct of the Chinese authorities that if reprisal were the prevailing principle of International Law, Japan need have stopped at nothing in revenging herself.

But Japan refrained from revenge, for it was her intention, in spite of the nature of her opponent, to set an example of generosity by carrying on hostilities in an enlightened fashion.

Thus Japan issued the ordinance protecting the Chinese staying in Japan, as mentioned above. She refrained from employing volunteers, as these did not belong to the regular army<sup>3</sup>. She prohibited the use of privateers in reprisal, and strictly forbade plunder, even of the most trivial kind<sup>4</sup>. More than that, she

<sup>1</sup> The Chinese privateer (*China Gazette*).

The *Smith*, a Chinese steamer, is now acting as a privateer. She has been equipped in Kie-lung, furnished with quick-firing guns, and started from Kie-lung accompanied by the Chinese man-of-war *Nan-shing*. The purpose of her starting is to detain the British ship *Liddesdal*. She failed to catch that ship, but she detained the *Pathan*, a British vessel, and brought that ship to Kie-lung.

<sup>2</sup> Messrs Ishikawa, Kusu-uch, Fuku-hara, Kanezaki, etc. were killed in this way.

<sup>3</sup> See Appendix IV.

<sup>4</sup> See Part II. Chap. V.

had the wounded prisoners as well nursed as her own men<sup>1</sup>. She treated all prisoners with the utmost generosity. She governed the people of the occupied districts well, and set at liberty many thousand combatants, who surrendered at Wei-hai-wei<sup>2</sup>. We will not venture to enumerate such instances because they are too numerous, but we will treat those which have some important relation to the naval war, in Part II. of the present work.

It must be confessed that this generosity is chiefly owed to European civilization, which was introduced thirty years ago, but in general it may be said that if the graft was from Europe, the stock was an ancient one, deep rooted in Japan from the earliest times.

Now let us refer a little to the battle of Port Arthur. The exaggerated report of one of the correspondents, who had been ill-treated by a certain Japanese general and had some grudge against Japan, gave rise to very disagreeable stories regarding this battle. The present writer was at that time within sight of the very scene, on board a Japanese man-of-war off the harbour, and on the 24th November, 1894, just after the occupation of the position, he visited the town. It is perfectly true that many Chinese soldiers were killed in the battle, but they were all combatants, except in a very few instances where non-combatants were killed by stray shots. It must be remembered that nearly all the non-combatants had escaped a month before the battle to Shan-tung and Sho-Ping-tau, and that there only remained four or five women, a few children and some men. The geographical position must also be considered. The position of Port Arthur is at the

<sup>1</sup> See Part I. Chap. V. *The Too-nang Affair*.

<sup>2</sup> See Part II. Chap. VI.

extremity of the peninsula of Liao-tung. The fortress was very strong and was deemed impregnable, but on the whole the place is not large. Against this small area more than twenty thousand Japanese troops were launched at the same time. The operation might be compared to crushing an egg with a large stone. The Chinese fought with great persistence to the last. The attack was extraordinarily determined, and the firing was exceedingly heavy. The town lies in a deep cup-like valley surrounded by mountains, broken only by an entrance from the sea. At 9 a.m. on the 21st all this valley was filled with dark and white smoke, and amid the smoke the guns flashed like a thousand bolts striking a single spot. Naturally after such terrible fighting many were found dead on the field.

It is a fact that before the battle, a Japanese general sent a letter to the Tao-tai to persuade him to surrender, but in vain. If the Chinese had been wise enough to surrender, they would have saved their lives, just as they did in the case of Wei-hai-wei. But unfortunately they were too proud to take this prudent course. They trusted too much to the strength of the forts and defended them with great determination, which only made the carnage all the worse.

To the strict moralist, war in itself is a very barbarous and disgusting thing, but if it is allowed to be unavoidable when necessity demands it, the killing of enemies cannot be avoided as its necessary effect, and the number of the killed must depend upon circumstances. On reference to history, we can find many instances of battles in which a great many were killed by an assault of the enemy, and if we examine the history of the wars of civilized nations, especially those

against the uncivilized, we can find many precedents for the most horrible carnage<sup>1</sup>.

The report by the correspondent regarding the action of the Japanese navy at the battle of Port Arthur was entirely incorrect. The following letter which I wrote to the editor of the *Japan Mail* from Port Arthur will explain how the report was exaggerated or rather invented by the correspondent :

“To the Editor of the *Japan Mail*.

Sir,—In September last, for the purpose of studying the practical application of International Law, I joined the Fleet, and embarked in a man-of-war of the Imperial Japanese Navy. I am now staying in Port Arthur after witnessing several battles. Being a subscriber to your paper, I saw in the issue of the 21st January some singular statements by Mr Creelman to which you refer. It being impossible for an eye-witness like me to pass over such a matter in silence, I enclose an explanation of this affair, in the hope that you will kindly have it translated at your office and published through the columns of your valuable paper. What I write is an accurate and faithful description of the things that actually happened, and I vouch for their truth in the sight of Heaven. Convinced that the contents of my letter are of value to the public at large, I venture to trouble you, especially since my facts may furnish material to strengthen the

<sup>1</sup> Some have charged the Japanese with a massacre after the battle. As a matter of fact some Chinese were killed after the fight, but their number was not great. But these were nearly all combatants. The source of the mistake was that the uniform of the Chinese soldier is a kind of overcoat, and when it is taken off he looks just like a civilian. The Chinese quickly got rid of these coverings after the battle, and on several occasions they, thus disguised, attacked the Japanese guards, who were stationed at the important points of Port Arthur, such as Pigion Bay, Riu-ko-bi, Ogon Hill, and so on. On other occasions they stole into the arsenal and destroyed important machinery. In those cases the Japanese soldiers were obliged to kill them to defend their persons. But as these combatants took off their uniforms, in the eyes of foreigners they seemed to be non-combatants. We might here quote the words of the Rev. Dr T. J. Lawrence. He takes a very benevolent view of International Law. Still he says: “An inhabitant of an occupied district who cuts off stragglers, kills sentinels, or gives information to the commanders of his country’s armies, may be, and probably is, a high-souled and devoted patriot; but nevertheless the laws of war condemn him to death, and the safety of the invaders demands that they be carried out in their full severity.”

position you take in the matter. Harassed by official business of various kinds, I cannot find leisure to write at greater length, and must crave your kind indulgence.

I am, Sir, your obedient servant,

TAKAHASHI SAKUYE,  
*Hogakushi,*

Professor at the Naval University, and Ex-legal Adviser to the  
Commander-in-Chief of the Regular Imperial Fleet."

#### ENCLOSURE.

On the occasion of the battle of Port Arthur I was on board the *Itsukushima* and accurately observed the fight as carried on both on shore and at sea. I saw how the Imperial troops fought, and how the squadron cooperated with the army off the coast of Port Arthur, and I watched the movements of the enemy with the utmost vigilance. Similarly, I carefully looked out for any incident that might furnish material for the study of my special subject, and I do not therefore hesitate to say that I am among those best informed as to what actually took place on that occasion. Equally I do not hesitate to declare that I saw nothing blameworthy about the assault on Port Arthur.

I have seen to-day in a copy of the *Japan Mail* that reached me, that Mr Creelman, the war-correspondent of the *New York World*, wrote to that paper to the following effect: "Torpedo-boats were going through the waves, sinking junks loaded with men, women and children endeavouring to escape." "Ten junks laden with terror-stricken people were thus sunk, and the water was filled with drowning inhabitants." While regretting for the sake of Mr Creelman, whose honour as a gentleman may be impaired by such absurd fabrications, I fear that the public might be led astray by what he has written, and therefore I feel constrained to refute the false statements made by him.

In the first place, the assertions of Mr Creelman are entirely imaginary; for his allegation that he saw from the shore, on the day of the assault upon Port Arthur, that is on November 21st, 1894, Japanese men-of-war and torpedo-boats in motion, cannot be founded on actual fact. It is true that on the 21st men-of-war and torpedo-boats were off the coast of Port Arthur, but for two days from the



evening of the 21st they were away from the coast, owing to stress of weather. Now Port Arthur was not entirely taken on the 21st. Severe struggles were still in progress on that day. Hence it was practically impossible at such a juncture to see the war-ships and torpedo-boats in motion off the coast of Port Arthur, and the fictitiousness of any statement to the contrary will be admitted by any one actually at the scene of the battle. On that same day certain staff officers of the Army, desiring to communicate some intelligence to the fleet, could only effect their object by braving extraordinary dangers and hardships, and by passing through the lines of the enemy. How then could Mr Creelman have seen the movements of the fleet and the torpedo flotilla except in pure imagination!

Secondly, while the fleet and flotilla were lying off the coast of Port Arthur and in the vicinity, from 5 a.m. to 6 p.m. on the 21st, not a single Chinese junk was captured. Only two junks escaped that day at a little past 5 p.m. But the commander of the fleet had specially ordered that any small vessel of the kind should be let alone, attention being paid to the larger only. No other junk escaped. It is true that there were five or six junks on the shore close by the foot of Lao-Tie-Shan, but they were all beached. Thus the statement that junks loaded with men, women and children were sunk is not only absolutely groundless but the very allegation that such a number of junks attempted to escape is a fabrication.

Thirdly, it is a fact that at a little past 4 p.m. two steamers emerged from Port Arthur. It was subsequently known by the confession of Chinese prisoners that a number of Chinese officers were on these vessels. It is also a fact that torpedo-boats pursued these steamers. It would have been a neglect of duty on the part of the fleet to disregard the escape of such vessels. When the torpedo-boats gave chase to the steamers, they signalled "Heave to, or take the consequence." The steamers not obeying, two blank cartridges were fired after them, but they still kept on their course. Moreover they returned the fire of their pursuers, and the latter therefore began to chase them with more vigour. Thereat one of the steamers turned back into the harbour and the other changing its course, ran ashore and all the persons on board fled. Was not this procedure on the part of the Japanese officers perfectly proper and in strict accordance with the canons of western nations?

The foregoing explanations are sufficient to prove the falsehood

of Mr Creelman's statements. I regret that he should be so lost to the sense of honour as to fabricate such injurious stories. In order that the public may not be deceived, I beg you to give publicity to these facts.

Your obedient servant,

TAKAHASHI SAKUYE,

*Hogakushi.*

PORT ARTHUR.

*February 11th, 1895.*

## **Sect. II. The Correspondence between Japan and China regarding the Exemption of Private Property at Sea.**

At the very commencement of the war, the Japanese government thought it would be the most convenient and civilized course to hold some communication with China regarding the exemption of private property from capture at sea. On this subject, however, on the 6th of August, 1894, the Chinese government sent a note through the American ministers in Tokyo and Peking proposing that such exemption should be declared both by China and Japan. The Japanese government at once replied to this in the affirmative. The answer was as follows :

"If the Chinese government guarantees the exemption of merchant vessels, Japan has no objection to exempt all such from capture, except those which have contraband on board or those which are running blockades."

On the 10th, the Chinese government sent a letter saying that all the ships which belonged to the steam-ship companies under the protection of the Japanese Government and those of the Chau-Shang-Kiuk must be exempt.

Thus things seemed to go swimmingly so far ; but there remained a serious ground for uneasiness, as in

the proclamation of the Chinese Emperor, we find the following words :

“We also command the Manchu generals, viceroys and governors of the maritime provinces, as well as the commanders-in-chief of the various armies, to *prepare for war and to make every effort to fire on the *Wojen*<sup>1</sup> ships if they come into our ports and utterly to destroy them.*”

This is clearly contradictory to the Chinese note mentioned above. The Japanese government acted very cautiously, to find out whether the proclamation or the note would be adhered to, and sent a despatch asking whether China would correct the proclamation or not. The Chinese government was much puzzled, and at last gave an answer, informing Japan that only the ships which were lying in neutral ports, and those engaged in trade in other parts than the coast of China, would be exempt from capture.

The first part of this answer was sheer nonsense, since it is obvious that belligerents cannot detain an enemy's vessel in a neutral port, and hence there was no necessity for the communication. In the second place, according to the answer returned by the Chinese government, the terms of the proclamation were still in force, and consequently Japanese ships going to the Chinese coast would be “fired upon and utterly destroyed,” as it ordered. If such barbarity were permitted, we could hardly see the need for the original note. For the above reasons the Japanese government was not satisfied with the answer, and after some correspondence communication ceased.

But Japan did not weary of her law-abiding intention, and soon took another step to further the object

<sup>1</sup> An ancient and familiar Chinese term for ‘Japanese.’

by organizing a prize court, and by issuing a prize law, the details of which I will give in the next section.

**Sect. III. The Establishment of the Prize Court, Promulgation of Prize Law, and steps taken to secure the Rights of Neutrals.**

Just as Japan dealt fairly with her enemy, so she endeavoured to treat neutrals with no less consideration. For this purpose she organized a prize court, issued a prize law, strictly prohibited interruption of neutral trade, and sent lawyers to the field as legal advisers to the commanders-in-chief. In addition to the above, she lost no opportunity of acting with justice, though here I will deal only with matters concerning naval affairs.

*A. The establishment of the Prize Court.*

On the 21st August, 1894, a prize court law was issued<sup>1</sup>. In compiling it the authorities chiefly referred to the German Prize Act of June 1864, and the English Naval Prize Act of the same year. Thus the bulk of the law was derived from the most applicable parts of the Anglo-American and continental systems. Soon after the promulgation of this law the court was established at Sasebo, one of the Japanese naval stations.

*B. Prize Law<sup>2</sup>.*

Almost at the same time the prize law was issued. This contains 32 articles, which were derived from the works of Professor Holland and Sir Godfrey

<sup>1</sup> See Appendix VI.

<sup>2</sup> See Appendix VII.

Lushington, the decisions of the Institute of International Law in 1882, and the instructions for the French navy of 1870.

On the whole, the net result of this compilation was a close imitation of European models, but there is one important difference between the copy and the original. In western countries, it was and has been the usual custom that the whole or a portion of the captured movables should be given to the captors, according to some scale of reward fixed by public authority. In the United States, Congress has power to make rules concerning captures at sea, and it exercised this power in 1864 by passing an act which gave the whole of the value to the captors when the vessel or vessels making the capture were of equal or inferior force to the prize; but if their force was superior, they were to receive a half only, the rest going to the treasury. In the same year the British Parliament legislated on the subject in the Naval Prize Act, which expressly declares that the captors "shall continue to take only such interest (if any) in the proceeds of prizes as may be from time to time granted to them by the crown." But it is and has been the invariable rule of England, in modern times, to surrender the entire proceeds to the officers and men engaged in the capture. The general practice of prize courts is to order a sale of the vessel or goods on condemnation, and the sum thus realized is divided among the captors. But in Japan no prize was to be given to the captors, who are deemed to seize property at sea on the ground of some breach of law connected with it, for the sake of their country and not for their own sake.

The attitude of Japan in regard to convoy calls for

mention. It is not necessary to discuss the long contested differences between the English and continental principles, but it is noteworthy that Japan ordered naval officers to give credence to the declaration of a convoying officer. The idea was simply that as generosity was the chief object of Japan, she did not wish to search and make actual inspection in order to verify the character of escorted merchantmen and goods, trusting to the honour of neutral officers. This was the main idea of the Japanese in adopting the continental principle regarding convoy; but she was not in actual cases so lax as to admit exorbitant claims of the right of convoy, such as an English admiral made for all British ships in the China sea.

*C. The instructions regarding the protection of neutral trade.*

During the war, the Japanese government paid great attention to the protection of neutral trade. At the beginning of hostilities, Japan declared that she would not bombard Shang-hai and its approaches, the centre of the neutral trade along the Chinese coast. Before the battle of Wei-hai-wei, she again declared that she would not attack Che-foo without notification. On the 14th March, 1895, when the Russian Government demanded the protection of the tea trade in China, the following instructions were given by the Commander-in-Chief Prince Aki-hito:

“The Russian trade in Chinese tea finds its way from Han-Kau to Tien-tsin, where the route divides into two—one to Europe by the Indian Ocean, and the other to Calcutta by land. The Russian government has required us not to interrupt the tea trade on these routes when the Japanese army is marching through the province of Chihli. Hereupon, I order that attention be paid to the protection

of all trade, not only the Russian tea trade, but all neutral trade, so far as such trade is consistent with our military operations.

*Signed: PRINCE AKI-HITO,  
Commander-in-Chief."*

*D. Legal advisers sent to the field.*

The prize law was issued, and the prize court was established, as described above. But Japan was not satisfied with these reforms in legislation, and sent lawyers to the field to advise the commanders-in-chief in all matters bearing upon law, and to make sure that the laws were carried out by the officers. For the army N. Ariga, the author of "*La Guerre Sino-Japonaise au point de vue du Droit International*," was ordered to serve as legal adviser. For the navy I myself was ordered to go on board the flag-ship as a member of the staff of Admiral Ito.

I went to the squadron shortly after the Kow-shing affair, for that incident had forced me to make haste. I joined the squadron at the mouth of the Ta-tong River in Korea. Before my arrival there had been only two cases of prize law. From the time of my joining the squadron until the end of the war there arose nearly a hundred cases, the details of which I will give in the next section.

**Sect. IV. Application of Prize Law.**

As soon as the war commenced, it came to the knowledge of the Japanese authorities that ships of the Chau-Shang-Kiuk adopted neutral nationalities and were acting as transports of contraband of war. The following are those which changed their nationality:

Present name	Former name	New nationality	Date of the change of nationality.
<i>Chi-yuen</i>	<i>Chi-yuen</i>	British	Nov. 1894
<i>Poo-chi</i>	<i>Poo-chi</i>	do.	not certain
<i>Kwang-lee</i>	<i>Kwang-lee</i>	do.	Nov. 1894
<i>Foo-yi</i>	<i>Hae-shin</i>	German	not certain
<i>Shen-yi</i>	<i>Shen-yi</i>	do.	Sept. 1894
<i>Min-yi</i>	<i>Hsin-fung</i>	do.	do.
<i>Kung-yi</i>	<i>Hae-an</i>	do.	do.
<i>Ping-yi</i>	<i>Yung-ching</i>	do.	do.
<i>Wycliffe</i>	<i>Kung-pai</i>	do.	Nov. 1894
<i>Shung-tung</i>	<i>Chin-tung</i>	do.	do.
<i>Fu-ping</i>	<i>Fu-ping</i>	do.	Oct. 1894
<i>Fu-shung</i>	<i>Fu-shung</i>	do.	Nov. 1894
<i>Li-ting</i>	<i>Hae-ting</i>	do.	Oct. 1894
<i>Li-shun</i>	<i>Fung-shun</i>	do.	do.
<i>Li-foo</i>	<i>Mei-foo</i>	do.	do.
<i>Guymanerung</i>	<i>Hsin-yu</i>	do.	do.
<i>Margarete</i>	<i>Kwang-chi</i>	Austrian	not certain

There were many neutral ships which had been suspected of being in the hostile service, but we need not mention their names here, although we have an authoritative list of them. Let us now describe the Chinese vessels which kept their own nationality and acted as transports for a military purpose.

Those of the Chau-Shang-Kiuk :

*Too-nang ; Kwei-lee ; Hsin-shing ; Jih-tsin ; Kiang-teen ; Kian-yu ; Kian-yun ; Kian-tsu ; Kian-tung, etc.*

Those of the Commercial Bureau of Formosa :

*Cass ; Smith ; Fu-chin, etc.*

Those of the Kai-ping Kwang-Wu-Kiuk :

*Fu-ping ; Chan-ping ; Yung-ping ; Pei-ping, etc.*

Beside these facts, the following information came into the hands of the Japanese Navy :



The number of Chinese ships, carrying the contraband of war at certain fixed periods.

No. of Ships.	The course of navigation.
3 of the Chau-Shang-Kiuk	Shang-hai—Hong-Kong or Canton.
3 do.	Shang-hai—Amoy or Swato.
1 do.	Shang-hai—Fu-chow.
1 do.	Shang-hai—Ning-po or Wan-chow.
2 of the Commercial Bureau of Formosa	Shang-hai—Kelung, Tamsui, Amoy, or Hong-Kong.
1 belonging a private person	Fu-chow—Tamsui or Kelung.
2 of the Chau-Shang-Kiuk.	Shang-hai—Tien-tsin.
5 do.	Shang-hai—Che-foo or Tien-tsin.

Upon these and many neutral ships the Japanese endeavoured to enforce the rights of belligerents. The following is the result of this enforcement:

*Table of Visit, Search, and Detention  
during the war.*

Name of Suspected Vessel	Nationality	Date	Place	Visit	Search	Capture	Name of Japanese Warship
<i>Kow-shing</i> ...	G. B.	1894 25th July	Korean waters				<i>Naniwa</i>
<i>Chao-chow-foo</i>	Germany	27th	do	yes	yes		<i>Akagi</i>
<i>Wen-chow</i> ...	G. B.	6th Oct.	Shan-tung	do			<i>Takachiho</i>
<i>Peik</i> ...	Norway	17th	Promontory		do		<i>Naniwa</i>
<i>Boebach</i> ...	Germany	do	do	do			<i>Chi-yoda</i>
<i>Gaelic</i> ...	G. B.	2nd Nov.	Yokohama		do		<i>Akitsu-su</i>
<i>Sydney</i> ...	France	5th	Kobe		do		<i>Torpedo-Boats</i>
<i>Too-nang</i> ...	China	26th	Port Arthur	do			<i>Tsukuba</i>
<i>Ching-king</i> ...	G. B.	1895 18th Mar.	Entrance to Pechili	do			<i>Hi-ei</i>
<i>Li-foo</i> ...	Germany	do	do	do			<i>Aka-gi</i>
<i>Fie-lung</i> ...	do	19th	Taku	do			<i>Hi-ei</i>
<i>Min-yi</i> ...	do	do	do	do			do
<i>Li-ting</i> ...	do	do	do	do			do
<i>Peik</i> ...	Norway	do	do	do			do
<i>Chi-yuen</i> ...	G. B.	do	do	do			do
<i>Esang</i> ...	do	20th	Entrance to Pechili	do			<i>Aka-gi</i>
<i>Li-foo</i> ...	Germany	do	Taku	do			<i>Hi-ei</i>

Name of suspected vessel	Nationality	Date	Place	Visit	Search	Capture	Name of Japanese Warship
<b>1895</b>							
<i>Leen-shing</i> ...	G. B.	21st Mar.	Entrance to Pechili	do			<i>Aka-gi</i>
<i>Rossan</i> ...	do	do	do	do			do
<i>Fie-ching</i> ...	Germany	do	Taku	do			<i>Hi-ei</i>
<i>Kung-ping</i> ...	G. B.	do	Shan-tung	do			<i>Kai-mon</i>
			Promontory				
<i>Chi-yuen</i> ...	do	22nd	Entrance to Pechili	do			<i>Aka-gi</i>
<i>Shen-yi</i> ...	Germany	do	do	do			do
<i>Kung-ping</i> ...	G. B.	do	do	do			do
<i>Kang-chi</i> ...	China	23rd	Wei-hai-wei		do		<i>Ten-rū</i>
<i>Te-yen</i> ...	Germany	25th	Entrance to Pechili	do			<i>Taka-o</i>
<i>Yik-sang</i> ...	G. B.	26th	Shan-tung	do			<i>Kai-mon</i>
			Promontory				
<i>Wo-sang</i> ...	do	28th	Entrance to Pechili	do			<i>Taka-o</i>
<i>Shu-sang</i> ...	Germany	do	Shan-tung	do			<i>Fusō</i>
<i>Tsung-chow</i> ...	G. B.	29th	do	do			<i>Maya</i>
<i>Si-an</i> ...	do	do	Entrance to Pechili	do			<i>Taka-o</i>
<i>Wu-chang</i> ...	do	do	do	do			do
<i>Yik-sang</i> ...	do	do	do	do			do
<i>Chung-king</i> ...	do	do	do	do			do
<i>Fie-ching</i> ...	Germany	do	do	do			<i>Musashi</i>
<i>Wen-chow</i> ...	G. B.	30th	do	do			<i>Yamato</i>
<i>Wo-sang</i> ...	do	do	do	do			do
<i>Si-an</i> ...	do	do	do	do			do
<i>Fei-ching</i> ...	Germany	do	do	do			do
<i>Fie-lung</i> ...	do	do	do	do			do
<i>Niu-chang</i> ...	G. B.	do	Shan-tung	do			<i>Maya</i>
			Promontory				
<i>Kai-fong</i> ...	do	31st	do	do			do
<i>Leen-shing</i> ...	do	do	do	do			do
<i>Kai-fong</i> ...	do	do	Entrance to Pechili	do			do
<i>Hal-ki</i> ...	do	1st April	Shan-tung	do			do
			Promontory				
<i>Shen-yi</i> ...	Germany	do	Wei-hai-wei	do			<i>Ten-rū</i>
<i>Li-ting</i> ...	do	do	do	do			do
<i>Pechili</i> ...	G. B.	do	Entrance to Pechili	do			<i>Musashi</i>
<i>Shen-yi</i> ...	Germany	do	do	do			do
<i>Tam-sui</i> ...	G. B.	4th	near Formosa	do			<i>Naniwa</i>
<i>Kung-ping</i> ...	do	do	Shan-tung	do			<i>Kaimon</i>
			Promontory				
<i>Li-shing</i> ...	G. B.	do	Wei-hai-wei	do			do
<i>Shen-yi</i> ...	Germany	5th	Entrance to Pechili	do			<i>Aka-gi</i>
<i>Pechili</i> ...	G. B.	do	do	do			do
<i>Li-ting</i> ...	Germany	do	do	do			do
<i>Kung-ping</i> ...	G. B.	do	do	do			<i>Yamato</i>
<i>Wu-chang</i> ...	do	7th	do	do			do
<i>Sun-wo</i> ...	do	8th	do	do			do
<i>Tsung-chow</i> ...	do	do	do	do			do
<i>Yik-sang</i> ...	do	9th	Taku			yes	<i>Tsukuba</i>
<i>Kung-ping</i> ...	do	do	Entrance to Pechili	do			<i>Aka-gi</i>
<i>Kai-fong</i> ...	do	10th	do	do			do
<i>Lory</i> ...	do	11th	do	do			<i>Yamato</i>
<i>Chung-king</i> ...	do	do	Inkow	do			<i>Atago</i>
<i>Lory</i> ...	do	15th	do	do			do
<i>Pechili</i> ...	do	18th	do	do			do
<i>Merry Steward</i> ...	Germany	20th	do	do			do
<i>Leen-shing</i> ...	G. B.	do	Taku	do			<i>Tsukuba</i>

Name of suspected vessel	Nationality	Date	Place	Visit	Search	Capture	Name of Japanese Warship
<i>Fie-ching</i> ...	Germany	1895 20th April	Taku	do			<i>Kongo</i>
<i>Tak-sang</i> ...	G. B.	21st	do	do			<i>Tsukuba</i>
<i>Shang-tung</i> ...	do	do	do	do			do
<i>Tang-chow</i> ...	do	do	do	do			do
<i>Kai-fong</i> ...	do	do	do	do			do
<i>Chung-king</i> ...	do	22nd	do	do			do
<i>Shen-yi</i> ...	Germany	do	do	do			do
<i>Contest</i> ...	G. B.	do	Wei-hai-wei	do			do
<i>Li-yun</i> ...	do	24th	Taku	do			<i>Kongo</i>
<i>Kwei-lin</i> ...	do	25th	do	do			<i>Tsukuba</i>
<i>Si-an</i> ...	do	26th	do	do			<i>Kongo</i>
<i>E-sang</i> ...	do	do	do	do			do
<i>Si-an</i> ...	do	2nd May	Inkow	do			<i>Chō-kai</i>

On looking through the list the following points come out :

I. At the beginning of the war the affairs were very few, but gradually increased in number. Moreover the sphere of visit, search, and detention gradually extended over every part of the seas in the Far East.

II. This sphere approaches nearer and nearer to the coast of China.

III. Notwithstanding the occurrence of so many affairs, only one case, that of the *Yik-sang*, was brought to the prize court.

Let us now make some inquiries into the causes of the above mentioned phenomena.

I. *Why were the affairs so few at the beginning of the war, and gradually more numerous ?*

This fact entirely depended upon the expansion of the Japanese sphere of naval superiority. It is very interesting to notice that the number of affairs regularly kept pace with that expansion. In general, the area of sea controlled by Japan increased at three stages during the war.

The 1st period extends from the outbreak of the

war to the battle of the Yellow Sea (July 25th—Sep. 17th, 1894). During this period the power of Japan did not yet stretch over the Yellow Sea, as the strong Chinese squadron was still in existence. For this reason, the Japanese squadron could not engage in visit, search and detention. Here it may be noticed that the *Kow-shing* affair alarmed the owners of neutral ships, and they did not venture so far from China as before, this being also a good reason why the Japanese fleet met with few ships in Korean waters.

The 2nd period is from the battle of the Yellow Sea to the occupation of the Gulf of Ta-lien and Port Arthur, and down to the surrender of the Chinese squadron (Nov. 22nd, 1894—Feb. 12th, 1895).

During this period there occurred but few affairs, just as in the former period. It was due to the fact that, although the supremacy of Japan extended over the Yellow Sea after the great battle, the remnant of the Chinese fleet was still at Wei-hai-wei, the opposite peninsula to Liao-tung. Thus the Japanese squadron had no leisure to engage in visit, &c. Moreover after the naval occupation of the northern part of the waters of the Far East, neutral ships never attempted to pass that way. Hence the paucity of prize affairs.

The 3rd period lasts from the surrender of the Chinese squadron to the end of the war (Feb. 12th—May 8th, 1895). During this period all the seas of the Far East came under the control of Japan, and the Japanese squadron had little to occupy it except the enforcement of prize law. Thus prize affairs increased everywhere except at Shang-hai, Che-foo and other treaty ports, where an analogue of neutral soil was thought to exist.

Consequently the expansion of the Japanese sphere

of supremacy bore a very striking proportion to the number of prize affairs.

II. *Why the sphere of visit, search and detention was so extensive at the close of the war, and had come nearer the coast of China?*

The reason is shown very clearly by the above explanation. But let us continue our inquiries from other points of view. The extension was due to two causes:—(a) the change in Japanese strategy; (b) the effect of the treaty of armistice.

(a) The change of Japanese strategy during the war.

I will not venture to enumerate here the many forms of strategy employed in naval warfare, which are quite outside the sphere of the present inquiry. But we must refer to the two great systems of strategy in order to solve the above question. The one form of strategy is employed in the offensive, and the other in the defensive but active method of naval warfare, which has lately received the name of 'commerce-destroying,' or in French 'guerre de course<sup>1</sup>.'

The essence of the first system of strategy is the concentration of effort upon preparation for attacking the enemy. By the second system it is only intended to maintain a naval war by preying upon the enemy's commerce, and it is therefore necessary to scatter the cruisers at vital points through which commercial shipping must pass. This second strategical system was adopted by the French navy for many years, and at times had a marked effect in inducing her enemies to seek peace.

<sup>1</sup> Mahan's *Influence of Sea-power upon History*, pp. 8, 31, 133, 206, 229, 297, 317, 539.

During the initial portion of the Chino-Japanese War the first system only was made use of by the Japanese squadron. Thus the naval force was always concentrated, in its eagerness to meet the enemy. It may be noticed that, even at that time, it was quite possible to engage in commerce-destroying if the Japanese squadron preferred to adopt the strategy of the '*guerre de course*.' But this was not the case, and consequently prize affairs were very rare in the earlier periods of the war. This is the most accurate answer to the question why prize affairs were so few at the beginning of the war.

After the destruction of the Chinese squadron the Japanese strategy underwent a complete change, and the '*guerre de course*' was adopted since there was now no other employment for the fleet. Thus the Japanese navy diffused its efforts and distributed its force at important points where neutral ships would necessarily pass.

The above are the reasons why the points of visit, &c., were so widely scattered at the end of the war.

(b) The treaty of armistice.

On March 30, 1895, the treaty of armistice was ratified. By Art. 4 of this treaty it was provided that the belligerents should have the right of visit and capture even in the time of armistice. By virtue of the same treaty the respective belligerents found nothing to hinder their going very close to the hostile shore, for it is difficult to draw any line of armistice on the sea as we can on land, and consequently belligerent ships cannot be stopped by the same restrictions which could be strictly enforced upon armies on land. For that reason the Japanese fleet

went exceedingly near the coast of China in order to enforce its belligerent right, without any risk of being fired upon. In consequence prize affairs occurred very near the coast of China, as at Taku and other parts.

III. *Why was only a single case brought to the Prize Court?*

Any one who has actually acted as a prize officer can easily solve this question, but for a man who merely reads books and contents himself with abstract theories this fact may seem very curious. Law-breakers in general are very cautious in concealing their guilt. On the sea especially it is very easy to escape capture by throwing all evidence into the sea, or by burning it in the furnace, because there is ample opportunity to do this between the time of the first appearance of the captor and his actual arrival. Of course we have a rule in prize law providing for these cases, and enacting that the spoliator of ship's papers and other evidence is liable to detention. But this rule has proved nominal, and has had very few applications in fact. Let us adduce two instances to illustrate this.

On October 16, 1894, a Japanese man-of-war searched the Norwegian ship *Peik*. It was almost certain that many Chinese on board were soldiers, but in the absence of evidence we were obliged to permit her to go to the hostile port. Soon afterwards, as we expected, we learnt that they were Chinese soldiers, and that they had burnt their uniforms in the furnace of the engine-room as soon as they sighted the Japanese warship.

Another instance was discovered during the battle of Port Arthur. When the decisive engagement was

raging, a steamboat named the *Ching-long* arrived in the thick of the fight at full speed. The Japanese admiral at once sent prize officers, but no contraband could be found, only an Englishman and some Chinese being on board. But to our surprise, after the occupation of Wei-hai-wei, we found abundant evidence that the Englishman on board the *Ching-long* was the well-known Vice-Admiral M<sup>c</sup>Clure, and that the steamer had always served as a military despatch boat during the war.

As a whole these adventurers were very adroit in avoiding capture by skilfully concealing all evidence. Thus the only case in which we had the opportunity of detaining a ship would be when a ship was carrying munitions of war. But such cases did not frequently occur. As a consequence, the cases actually brought before the prize court could be but few.

At this point some may object that the recital of these facts bears no relation to International Law. But evidently a true conclusion cannot be expected from those who have not a sufficient number of actual instances from which that conclusion may be drawn by a process of induction. Moreover applications of prize law are in themselves nothing but parts of the lawful 'guerre de course,' and those who wish to understand prize law should know the 'guerre de course,' otherwise they will be in great danger of becoming bookish theorists, whose opinions are based on elegant but illusory theories without any practical application. For this reason I have ventured to explain the relation of naval strategy to prize affairs.

Let us now proceed to mention in the following chapters the principal occurrences in the war which gave rise to legal discussion.



# PART I.

## PRIZE CASES.

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### CHAPTER I.

#### THE KOW-SHING AFFAIR.

##### **Sect. V. General Description of the State of Things previous to the Kow-shing Affair.**

##### *I. A sketch of the relations between China and Japan previous to the war.*

For a long time heavy clouds threatened the Far East, Korea being the centre of the disturbance, and sooner or later a terrible storm was expected in that part of the world. The Chinese government always pretended to sovereignty over Korea, which she held to be her tributary state; while Japan insisted upon its independence. These different views of the two empires several times thrust them into critical relations short of hostility. Matters however remained thus until 1894. In the spring of that year an insurrection broke out in Korea, and the Chinese government did not fail to seize the opportunity of declaring her supremacy. On June 8th she despatched 1500 soldiers to Korea for the purpose of suppressing

the insurrection, and at the same time sent a despatch to Japan containing the following passage :

"It is in harmony with our constant practice to protect our tributary states by sending our troops to assist them."

To this the Japanese government replied as follows :

"I beg to declare that although the words 'Tributary State' appeared in your note, the Imperial government have never recognized Korea as a tributary state of China."

By the Treaty of Tien-tsin and in virtue of the Chemulpo Convention, it was agreed that either Japan or China might send troops into Korea whenever the other sent soldiers, and in that case a notice should be immediately sent. So the Japanese had a right to carry troops into Korea. Moreover Japan recognized that some decisive action was required at that moment to maintain the independence of Korea, so she also despatched four thousand troops to Korea ; and at the same time sent the following note :

"I have the honour, in accordance with the provisions of the Treaty of the 18th of the 4th month of the 18th year of Meiji between the two governments, to acquaint Your Highness and Your Excellencies that owing to the existence of a disturbance of a grave nature in Korea necessitating the presence of Japanese troops there, it is the intention of the Imperial government to send a body of Japanese troops to that country."

Startled by the determined action of Japan, the Chinese government asked her to withdraw the troops, which of course the latter refused to do. The diplomatic despatches then came thick and fast. Meanwhile the Chinese government was not backward in making preparations for overwhelming the Japanese forces in Korea. It was reported that eight thousand

soldiers had been flocking in steadily increasing numbers, into Asan, a port of Korea, and it was also known with certainty that three British and seven Chinese vessels were engaged in transporting troops. Eight of the transports started from Taku on July 21st, 1894, another left on the 22nd, and the last on the 23rd.

This last vessel was the sunken ship, the *Kow-shing*.

## II. *The description of the Kow-shing.*

Name	<i>Kow-shing.</i>	
Owner	Indo-Chinese Steamship Navigation Co., London.	
Agents	Jardine, Matheson and Co.	
Nationality	British.	
Built	1883.	
Net Tonnage	1354.	
Gross Tonnage	2134.	
Complement		
Captain	Thomas Ryder Galsworthy	} British.
First Officer	Lewis Henry Tamplin	
Second "	Joseph Welsh	
Third "	Nathaniel Wake	
First Engineer	William Gordon	
Second "	W. L. Halley	
Third "	J. Primrose	
Quarter-master	Lucas Evangelista.	
"	Gregorio Altilar.	
"	Pedro Oriate.	
"	Donicio.	
Crew	64.	

This ship had on board eleven hundred Chinese troops including general and other officers, both artillery and infantry, together with a large number of guns and a great quantity of ammunition. There was on board one German, von Hannecken by name, who served as a Chinese officer although he claimed to be a passenger. Besides these there was neither passenger nor cargo, water ballast being used.

Here it will not be out of place to quote the following advices obtained by the intelligence department as to the nature of the *Kow-shing*.

(a) From Lieutenant Kuroi (July 14):

"On July 14th the *Kow-shing*, as soon as she arrived at Shanghai from Fuchū, was hired by China, and started for Tien-tsin on the 17th with ballast only. The first officer said that she was commissioned to serve as a transport for Chinese soldiers."

(b) From the Japanese Consul at Shanghai (August 6):

"The Chinese government has hired an English vessel, called the *Kow-shing*, lodging £40,000 in the Hong-Kong and Shanghai Bank, on condition of the payment of that sum to Jardine, Matheson and Co., if any accident should happen to that ship before or after the declaration of war."

This intelligence coincides with the account which Captain Galsworthy gave afterwards.

He said:

"I understood by the terms of the charter party that in the event of hostilities taking place between China and Japan the *Kow-shing* was to be taken over by the Chinese government and also that the European officers were to leave the ship."

According to the above information there were good grounds for believing that the *Kow-shing* was furnished with sealed orders at the time of her departure, though no actual evidence was forthcoming.

## Sect. VI. The sinking of the *Kow-shing*.

### I. *The opening of hostilities.*

According to the modern idea of International Law, a declaration is not necessary for the state of war. This position is too clear for discussion, and

moreover this is not the place for it. However, to give a clear idea of the affair it is very important to describe the first engagement with which the Chino-Japanese war started on its long course. We must therefore begin with a general sketch of the battle of Phung-do Island, the first encounter of the war.

It was about 6 a.m. on the 25th July, 1894, that the first division of the Japanese squadron saw two Chinese men-of-war near the island of Phung-do (or Round Island) in Korean waters.

At 7.5, the fleets approached each other within 3000 metres and began to open fire. It was thus the curtain rose on the first scene of the grand drama of war in the Far East. The encounter raged fiercely for about an hour and a half. One of the Chinese ships, being severely damaged, went ashore, while the other fled to Chelung Bay, to find her way back to China. While the Japanese fleet was chasing the enemy two other steamers had appeared in the offing. They were now near, and it was soon discovered that one of them was the *Tsao-Kiang*, the Chinese gunboat, and the other was the *Kow-shing*, which had left Taku on the 23rd, and just now arrived on the scene to play the most regrettable part in the matter.

## II. *The sinking of the transport.*

At 8.30 a.m. the Japanese fleet saw the *Kow-shing*, passing on the starboard in the distance. At 9.15, the *Naniwa*, one of the Japanese fleet, drew near the British ship, and signalled her to stop and fired two blank cartridges. Next she ordered her to anchor by the signal L. P. Prize officers were soon sent to her, and it was discovered that she carried nothing but enemy troops. Thereupon the *Naniwa* ordered the

*Kow-shing* to follow her, and this the captain of the transport consented to do. Soon after this the captain again signalled the *Naniwa*, requesting that a boat should be sent. When that request was complied with, the captain stated that although he was personally willing to obey the orders of the *Naniwa*, the Chinese officers on board would not allow him to do so, demanding that he should steer in the direction of Taku, whence they had come. He therefore begged permission to take this course. Meanwhile the Chinese soldiers on board the *Kow-shing* were clamouring violently, and angrily threatening the captain and officers with their rifles. In this way, the Chinese soldiers prevented the *Kow-shing* from following the Japanese ship, overruling the will of her captain. So the *Naniwa* signalled the British captain to leave his ship. He replied again by signal, requesting that a boat should be sent, but the answer was that the captain and his officers should proceed at once to the *Naniwa* in their own boats. The captain signalled in reply that he was not allowed to come. By this time the tumult among the Chinese soldiers had assumed serious dimensions. Under these circumstances there was no help for it but to hoist the red flag at the foremast of the *Naniwa*, in token that firing was about to commence, while signals were once more made urging the captain to leave the *Kow-shing* with all speed. No less than four hours had been spent in fruitless signals and negotiations, as it was the desire of the Japanese to make the Chinese surrender without bloodshed, and then guide the *Kow-shing* to a place of safety. The Chinese however were unable to understand the generosity of the Japanese, and menaced their commander, refusing

point-blank to obey the instructions of the *Naniwa*. There was nothing for it but to sink the *Kow-shing*, and so in another moment a shell was fired at her engine-room with fatal precision. The ship began at once to settle down, and soon disappeared beneath the waves. Such is the general description of the sinking of the *Kow-shing*. Here, I think, nothing will more conduce to show the true nature of the affair, than to quote Captain Galsworthy's statements and the official report of the commander of the *Naniwa* which agree well together. From these we can gain a clear knowledge of the simultaneous events on both vessels.

(a) Extract of the official report of the Captain of the *Naniwa*.

"At 9.15 a.m., coming close to the *Kow-shing*, I signalled J. W. (to stop immediately) and fired twice blank-shot. The next signal was L. P. (to anchor), which she obeyed. I was at that time very anxious to catch the flying Chinese war-ship, and I turned a little while in that direction. At that time the *Kow-shing* signalled D. N. W. R. (may I proceed), which I answered by the signal J. W.

At 10.40, I sent Lieutenant Hitomi and others as prize officers to her. On seeing all the papers and other things, they found that she was carrying contraband persons. So I ordered her to follow me, which her captain consented to do. When I hoisted the signal L. R. (slip or weigh anchor immediately) she asked me by signal to send a boat for communication. I thought that the captain wished to tell me that he was prevented by the Chinese soldiers from obeying my order. So I ordered Lieutenant Hitomi to go again to her, giving him instructions to bring the Europeans on board the *Naniwa*, if the Chinese generals were resisting the carrying out of my order. When the lieutenant came alongside, the captain came to the gangway and said that the Chinese generals asked to be allowed to return to Taku, as they did not know that war had broken out. The lieutenant informed me that, when he went there, the Chinese soldiers were in a condition of the greatest confusion and excitement, so that the captain intentionally came down to the gangway and

would not let him go on deck. Four hours had been consumed in these fruitless negotiations, and there was no longer room for hesitation, so I signalled M. L. (quit the ship immediately). To this, the captain again answered by the signal demanding a boat. At that time, I thought it would be rather foolish to send our officers, as the Chinese were in such an excited state. Accordingly I signalled H. J. (boat cannot come). It seemed to me that she was awaiting the arrival of the Chinese fleet; moreover it was very dangerous to hesitate any longer, so I again hoisted the signal M. L. and at the same time a red flag on the foremast. At 1.10 p.m. I ordered one torpedo and shells to be discharged. The latter hit the engine-room.

At 1.15 the *Kow-shing* began to sink from her stern.

At 1.37 I sent two cutters to rescue the captain, the officers and the rest.

At 1.46 she sank.

The spot where she sank is two miles south of the island of Sho-pai-oul."

### (b) Captain Galsworthy's Report<sup>1</sup>.

The British steamer *Kow-shing*, owned by the Indo-China Co., left Shang-hai on July 17th, bound to Taku, under charter to carry Chinese troops from that port to Asan, on the coast of Corea. Arriving at Taku on the 20th, arrangements were made to ship the troops, and on the 23rd 1100 came on board, including two generals, a number of other officers of various ranks and a German ex-army officer named Hanneken, who came as an ordinary passenger. At 9.50 p.m. on the 23rd the ship proceeded on her voyage to Asan. All went well until the morning of the 25th, when off Shopeiul Island, we passed a man-of-war flying the Japanese naval ensign, with a white flag above it. This vessel proved to be the Chinese war-ship *Tai-yuen*. Shortly afterwards we sighted three Japanese men-of-war, the *Naniwa*, *Yoshino*, and another (probably the *Akitsu-shiu*). The *Naniwa* at once steamed towards us, flying a signal ordering us to stop. She also fired two blank charges, and signalled us to anchor, which we did at once. The *Naniwa* then steamed away, apparently to communicate with the other ships. I at once enquired by signal if I might proceed, to which the

<sup>1</sup> Taken from the *Japan Weekly Mail*.



*Naniwa* replied :—"Heave-to or take the consequences." A boat then came from the *Naniwa* and an officer came on board. He was received at the gangway, and he asked to see the ship's papers. They were shown him, and his attention particularly called to the fact that she was a British ship. Numerous other questions were asked and answered, the most important one being :—"Would the *Kow-shing* follow the *Naniwa*?" Being utterly helpless against a man-of-war, I replied that there would be no alternative but to do so, under protest, if ordered. The officer then left the ship, and proceeded to the *Naniwa*. Shortly after, being still at anchor, I was ordered by signal to cut, slip, or weigh immediately. The Chinese generals learning the meaning of the signals, and finding preparations were being made to follow the *Naniwa*, objected most emphatically. They were told how useless it would be to resist, as one shot would sink them in a short time. The generals then said they would rather die than obey Japanese orders, and as they had 1100 men against about 400 on the *Naniwa* they would fight sooner than surrender. They were told that if they decided to fight, the foreign officers would leave the ship. The generals then gave orders to the troops on deck to kill us if we obeyed the orders of the Japanese or attempted to leave the ship. With gestures they threatened to cut off our heads, to stab or shoot us ; and a lot of men were selected to watch us and carry out the order. A signal was then made requesting the *Naniwa* to send a boat, in order to communicate the state of affairs. A boat was at once sent, but a crowd of armed Chinese took possession of the gangway, until I prevailed on the generals to send them away. Eventually the officers came alongside, and a message for the commander of the *Naniwa* was sent, stating that the Chinese refused to allow the *Kow-shing* to be taken, and insisting upon returning to Taku. It was again pointed out that she was a British ship, and that she had left port before war had been declared. The boat then returned to the *Naniwa*, and on her arrival a signal was hoisted ordering the Europeans to leave the ship at once. A reply was given that they were not allowed to leave the ship, and asking for a boat to be sent. Notice was sent to the engineers to be handy on deck in case the Japanese fired. The *Naniwa* shortly afterwards replied that a boat could not be sent. The *Naniwa* then hoisted a red flag at the fore, which was apparently a signal for discharging a torpedo, as one was fired at the *Kow-shing*, but missed her. A broadside of five guns was then fired. At the time I was on the bridge, my

officers having left it, and seeing that the soldiers set to watch me had left their station at the foot of the ladder, I rushed to the wheel-house, and, after obtaining a life-belt (the last one remaining), I jumped over the ship's side. In doing so I heard a terrific explosion, and upon returning to the surface of the sea I found the atmosphere was thick with smoke and fine coal-powder. I at once struck out for the shore, distant about  $1\frac{1}{4}$  miles. There were many Chinese in the water, but I only saw one European, Mr von Hanneken. As the air cleared, a bullet struck the water close to my ear, and was followed by a shower of bullets. Knowing that shot from the *Naniwa* could not strike near me, owing to being sheltered by the hull of the *Kow-shing*, I turned on my back, and saw the Chinese soldiers firing at me from the deck and the 'tween deck ports. As far as possible I protected the back of my head with the life belt, and swam as low in the water as I could. Shortly after the *Kow-shing* went down, stern first. After being in the water some time, I was picked up by the *Naniwa's* cutter, in a very exhausted condition. The same boat had already rescued one of the quartermasters, who had been wounded in the neck by a rifle-bullet. On arriving at the *Naniwa* we found that the chief officer was the only other person saved by the Japanese, leaving five Europeans connected with the ship, and the passenger, missing. We anchored off Shōpeiul about 9 a.m. The firing commenced about 1 p.m., and we were taken aboard the *Naniwa* about 2.30 p.m. During the evening the *Naniwa* steamed away, arriving the next morning at the rendezvous of the Japanese fleet in Korea. We were then transferred to the *Yayeyama* together with a Danish electrician, named Muhlenstedt, and about sixty Chinese, who were taken prisoners from the Chinese steamer *Tso-kiang*, the same day. The *Yayeyama* then proceeded to Sasebo, arriving on the morning of the 28th. From Sasebo I and Mr Tamplin, the chief officer, came here in a small tender at noon on Sunday last, having in the meantime been interviewed by Mr Suyematsu Kencho, President of the Imperial Board of Legislature, who came down from Tokyo for that purpose. The quartermaster remained behind owing to his wound not having properly healed up; whilst Mr Muhlenstedt is being further detained. During our detention we received every care and attention necessary for our comfort. After arriving here we proceeded to H.M.'s Consulate, and made an affidavit of the entire circumstances. The *Naniwa*, I may mention, had been damaged on the port quarter from a shot fired from the *Tei-yuen* in the

morning. I can positively say I did not see the Japanese fire on the Chinese in the water. The Chinese killed many of their own people.—*Nagasaki Express*.

### III. *The European and the Chinese survivors. The Europeans.*

Just before the *Kow-shing* was struck, Captain Galsworthy summoned all the foreigners to the bridge, and bade them prepare to plunge overboard. As soon as the ship was fired on they jumped over the side. Boats were immediately launched from the Japanese men-of-war, and the captain, first officer and Quartermaster Lucas Evangelista were rescued. When the Europeans jumped overboard the Chinese soldiers immediately discharged their rifles indiscriminately at those in the water. It was said that the firing was so fierce that each European was shot at from five or six rifles on coming to the surface. The statement of the quartermaster corroborates this :

“At the time, I was fired at by Chinamen from the scuttles with five or six rifles at once ; I narrowly escaped being fatally wounded and got my neck pierced through by a shot. I lost my senses for a while, and when I came to myself, I was picked up by a boat which turned out to belong to the Japanese man-of-war.”

As for the remaining members of the crew, it is probable that they were in most cases killed by the bullets poured down upon them by the Chinese soldiers.

Here a few words must be said about the report of the Japanese firing upon the drowning men<sup>1</sup>. This

<sup>1</sup> See the *Japan Weekly Mail*, Aug. 18, 1894. The writer says : “When we recall the indisputable fact that boats were sent from the *Naniwa-kan* to rescue the Europeans who were among the swimmers, and that they did rescue three of them while actually under fire from the Chinese, it becomes evident that the *Naniwa* cannot have discharged her Gatling guns at men in the water since she must otherwise have risked destroying her own boats.”

was derived from the incorrect statement of the German officer von Hanneken, who served as a Chinese general. I think it will be sufficient evidence to prove the real facts of the matter if I quote the following written statement of Captain Galsworthy<sup>1</sup>:

"I am certain that the bullets which were falling around me in the water were fired by the Chinese soldiers on board, as not only did the position of the *Naniwa* prevent any one on board her reaching me with a bullet, but I actually saw the Chinese soldiers firing at me."

The survivors above-mentioned were brought to the naval station of Sasebo on board H.I.J.M.S. *Yayeyama* on August 28th. Here they were well treated, and the wounded Spaniard received medical treatment in the naval hospital at Sasebo. A week afterwards the captain and the first officer wished to be sent to Nagasaki, and at 8 a.m. on the 4th of September they were conveyed to the port on board a steam-boat specially dispatched for the purpose. The quartermaster remained in the hospital until his wound was healed.

On the 18th September at Nagasaki, an admiral's court was opened in the consulate of Great Britain for trying the officers of the *Kow-shing*. By that trial no blame was found attaching to the officers, a foregone conclusion<sup>2</sup>.

<sup>1</sup> See Appendix VIII.

<sup>2</sup> The sentence was as follows:

LOSS OF THE *KOW-SHING*.

Finding and Order of a Naval Court, held at H.B.M. Consulate, Nagasaki, on the 7th August, 1894.

The s.s. *Kow-shing* was an iron vessel, schooner rigged, of 1355 tons registered tonnage, official number 87000, built at Barrow-in-Furness, and belonging to the port of London. It appears from evidence given before this court that she sailed from Taku on or about the 23rd day of July 1894, bound for Gasan, in Corea, with no cargo but 1100 Chinese troops on board, that everything went well until

As to the German, von Hanneken, he escaped from the disaster and went to Chemulpo, whence he returned to China.

*The Chinese survivors.*

The greater part of the Chinese on board the *Kow-shing* were killed, partly by the fire from their own countrymen and partly by drowning. Forty-five of them, clinging to the mast of the sunken ship, were rescued by the French gun-boat the *Lion* on the 26th, and were brought to Chemulpo. According to the report of a Korean officer to his government, beside these, 467 Chinese were found on the islands

the morning of the 25th July, when about 9 a.m. the *Naniwa-kan*, a Japanese man-of-war signalled to her to stop and to anchor, with the island of Sho-pei-oul bearing about N. by E., distant  $1\frac{1}{4}$  miles. That after communicating with the *Kow-shing* twice by boat, and ordering the officers to quit the vessel, which they were prevented doing by the Chinese troops, the *Naniwa-kan*, about 1 p.m., discharged a torpedo at the *Kow-shing*, and this not striking her the *Naniwa-kan* fired a broadside of five heavy guns at her and continued firing both heavy and machine guns from deck and tops until she sank, about an hour later. That when firing commenced a number of the crew and Chinese troops jumped overboard, amongst them the master, Thomas Ryder Galsworthy, the first mate, Lewis Henry Tamplin, and a quartermaster, Lucas Evangelista (a Manilla man) who are the only members of the crew at present known to be saved. The court, having regard to the circumstances above stated, find as follows:—

1. That the ship was sufficiently sea-worthy and found well in all necessary respects.
2. That the conduct of the officers and crew before and up to the time of the sinking of the vessel was satisfactory and free from blame.
3. That the cause of the sinking was due to her having been repeatedly struck by heavy cannon shots from the *Naniwa-kan*, a Japanese man-of-war.
4. That no efforts on the part of the master or crew would have availed to avert the catastrophe.
5. That the court attaches no blame whatever to the Master, Thomas Ryder Galsworthy, or any of the officers or crew.
6. The expenses of the Court are merely approved.

Dated at Nagasaki, the 7th day of August, 1894.

(s. d.) John J. Quin.

(b. s.) H.B.M. Consul, president.

etc.

near the spot where the *Kow-shing* sank. 120 of them were brought to China by the German man-of-war *Illtis* on the 29th. After the Battle of Port Arthur, we found the following letter regarding this matter, which runs thus:—

FROM LI HANG-CHANG TO TAO-TAI KONG.

“The German man-of-war brought back 120 surviving soldiers here. She demands as compensation to be allowed to go into dry dock at Port Arthur to clear her hull; to this request we ought to accede.”

The above are the details of the *Kow-shing* affair. When the report of this event reached the English squadron in the Far East, the admiral and other officers were much concerned and sent several notes to the Japanese admiral. I will not consider these notes here, but go on to state the opinions of learned men on the affair.

### **Sect. VII. The Opinions of Professors Westlake and Holland.**

The first arrival of the news of this event in England produced a certain amount of excitement. Leading articles were freely interspersed with such phrases as “insult to the British flag,” “ample apology to be exacted from Japan,” “wanton outrage in time of peace,” “full compensation for engineers who may have perished<sup>1</sup>.” But amid this excitement there were two distinguished learned men whose acute and unimpassioned observation soon suggested the true nature of this affair, and notwithstanding the general

<sup>1</sup> See “International Law in the War between Japan and China” by Prof. Holland, *The Fortnightly Review*, Vol. XVII. 1895, or Holland’s *Studies in International Law*, pp. 112—129.

censure pronounced a correct judgement upon the case, even at a time when the complete facts were not known. These were Prof. Westlake and Prof. Holland, and the following letters were written but a few days after the tidings came to England.

(A). *Professor Westlake's Letter.*

THE SINKING OF THE *KOW-SHING*.

To the Editor of the *Times*<sup>1</sup>.

"Sir,—It is far from being as yet possible to form a definite opinion on the conduct of the Japanese cruiser *Naniwa* in sinking the Chinese transport *Kow-shing* while under the British flag, but, since the flag is concerned, the occurrence is of a nature to produce an excited state of feeling in this country, and it may be useful to give some indication of what points are clear, and to what points the inquiries which it is necessary to make ought to be directed.

First, the *Kow-shing* appears to have been British-owned and to have been rightfully flying the British flag, but it is equally clear that she was acting as a transport in the Chinese service. If to this it shall be found possible to add that the service was a belligerent one, nothing is more certain than that she was not entitled to any protection from the British flag and ownership. Lord Stowell condemned the *Orozembo*, a neutral (American) vessel, carrying three belligerent (Dutch) military officers, on the ground that a vessel hired by the enemy for the conveyance of military persons is considered as a transport subject to condemnation (6 Ch. Rob. 433). If three officers were sufficient to let in this doctrine, much more are 1,700 men with their proportion of officers.

Secondly, I hold it as equally certain that the Japanese were not precluded from taking the service as a belligerent one by the mere fact that war had not been declared. To begin war without a declaration is a bad habit, which has nevertheless found its way for centuries past into the practice of nations, and which cannot be considered to be already excluded from that practice by the small number of better examples which have been set during the second half of the present century. It is true that the commencement of war *de facto* is only valid in international law as between the parties

<sup>1</sup> See the *Times*, August 3rd, 1894.

to the war so commenced, neutrals being entitled to notice before they can be made liable to the peculiar responsibilities which a state of war imposes on them. But the *Kow-shing* was not acting as a neutral breaking a blockade or carrying contraband of war. She was a transport in Chinese service, and therefore a belligerent if China was a belligerent, just as a similar employment identified the *Orosembo* with the belligerent Dutch.

But, thirdly, the Japanese could not make the *Kow-shing* a belligerent by attacking her. In order to justify themselves against her neutral owners and the neutrals whom she carried, they must show either that war had already been commenced *de facto* between China and Japan by acts of hostility committed elsewhere, or that the Chinese fleet of which the *Kow-shing* formed a part was engaged in a service the completion of which Japan could not be expected to permit. The former alternative might be satisfied either by acts of hostility committed between China and Japan in Korea, or by acts of hostility committed between Korea and Japan in the course of a line of action in which Korea was receiving the support of China. The justification might probably be sustained on the ground of the latter alternative, by showing that the reinforcements on board the fleet in question were being poured into Korea for the purpose of dislodging the Japanese from a position which they claimed to be entitled to hold there.

Fourthly, however, the case as between England and Japan may not be decided by our admitting, if we should be bound to admit, that Japan had a right to treat the *Kow-shing* as a belligerent. What if it should appear that she might have been captured instead of being sunk, or that she might have been pursued so as to prevent her landing in Korea the troops which she had on board, or that, if she had landed them in any part of the Korean peninsula which she could have reached, the military damage to be apprehended from her doing so would have been slight? Here are a series of suggestions as to matters of fact, on which we are as yet entirely without the information needed for giving answers. And it must be confessed that if the answers were unfavourable to Japan, we should be breaking rather new ground in holding that we had a right to complain. That war must be conducted, even as between the belligerents themselves, on the principle that suffering must not be inflicted which is out of all proportion to the military advantage to be gained by it, is what none would deny. A belligerent towards whom that principle was violated would have the right to use measures of retorsion or to exact an



indemnity at the peace if he was able. But between states enjoying European civilization war is so seldom stained by a disregard of that principle that precedents are wanting for a neutral government's making a claim on behalf of its subjects who have suffered from a violation of it, when by their conduct they have identified themselves with one of the belligerent parties. On principle, however, it would seem that the claim might be made, and the recognition of the neutral's right might be a useful restraint on the excesses to which the terrible means of destruction now existing must operate as a temptation.

Fifthly, we are told that the Chinese troops on board the *Kow-shing* would not allow her to be surrendered. It cannot be maintained that this at all affected the right of the Japanese to destroy her, if, in consequence of her not being surrendered, it really was a matter of military necessity to do so. The Europeans who undertake the duty of commanding or transporting Chinese must stand or fall with them.

Yours faithfully,

J. WESTLAKE.

CHELSEA, *August 2.*"

(B). *Professor Holland's Letter.*

To the Editor of the *Times*.

"Sir—The words of soberness and truth were spoken with reference to the sinking of the *Kow-shing* in the letter from Professor Westlake which you printed on Friday last. Ignorance dies hard, or, after the appearance of that letter and of your remarks upon it, one might have expected that leading articles would be less lavishly garnished with such phrases as 'act of piracy,' 'war without declaration,' 'insult to the British flag,' 'condign punishment of the Japanese commander.' But these flowers of speech continue to blossom; and now that the facts of the case seem to be established beyond reasonable doubt by the telegrams of this morning, I should be glad to be allowed to state shortly what I believe will be the verdict of international law upon what has occurred.

If the visiting, and eventual sinking, of the *Kow-shing* occurred in time of peace, or in time of war before she had notice that war had broken out, a gross outrage has taken place. But the facts are otherwise.

In the first place, a state of war existed. It is trite knowledge, and has been over and over affirmed by courts, both English and American, that a war may legally commence with a hostile act on one side, not preceded by declaration. How frequently this has occurred in practice may be seen from a glance at an historical statement prepared for the War Office by Colonel Maurice *à propos* of the objections to a Channel tunnel. Whether or not hostilities had previously occurred upon the mainland, I hold that the acts of the Japanese commander in boarding the *Kow-shing* and threatening her with violence in case of disobedience to his orders were acts of war.

In the second place, the *Kow-shing* had notice of the existence of a war, at any rate from the moment when she received the orders of the Japanese commander.

The *Kow-shing*, therefore, before the first torpedo was fired, was, and knew that she was, a neutral ship engaged in the transport service of a belligerent. (Her flying the British flag, whether as a *ruse de guerre* or otherwise, is wholly immaterial.) Her liabilities, as such a ship, were two-fold :—

1. Regarded as an isolated vessel, she was liable to be stopped, visited, and taken in for adjudication by a Japanese prize court. If, as was the fact, it was practically impossible for a Japanese prize crew to be placed on board of her, the Japanese commander was within his right in using any amount of force necessary to compel her to obey his orders.

2. As one of a fleet of transports and men-of-war engaged in carrying reinforcements to the Chinese troops on the mainland, the *Kow-shing* was clearly part of a hostile expedition, or one which might be treated as hostile, which the Japanese were entitled, by the use of all needful force, to prevent from reaching its destination. The force employed seems not to have been in excess of what might lawfully be used, either for arrest of an enemy's neutral transport or for barring the progress of a hostile expedition. The rescued officers also having been set at liberty in due course, I am unable to see that any violation of the rights of neutrals has occurred. No apology is due to our government, nor have the owners of the *Kow-shing* or the relatives of her European officers who may have been lost any claim for compensation. I have said nothing about the violation by the Japanese of the usages of civilized warfare (not of the Geneva Convention, which has no bearing upon the question), which would be involved by their having fired upon the Chinese troops in the water ;

not only because the evidence upon this point is as yet insufficient, but also because the grievance, if established, would affect only the rights of the belligerents *inter se*; not the rights of neutrals, with which alone this letter is concerned. I have also confined my observations to the legal aspects of the question, leaving to others to test the conduct of the Japanese commander by the rules of chivalrous dealing or of humanity.

Your obedient servant,

T. E. HOLLAND.

ATHENÆUM CLUB, *August 6.*"

Next year, that is in 1895, Professor Holland again wrote a valuable essay on "International Law in the war between Japan and China." In this essay he fully explained the theory governing this *Kow-shing* affair, and gave final judgement upon it. He says "As early as August 7th, I maintained, in a letter to the 'Times,' that a state of war may well exist without declaration; that a neutral vessel, after notice of a war so existing, is liable, if engaged in a forbidden traffic, such as the carriage of troops for a belligerent, to be arrested and carried in for condemnation by a prize court, and that, if she refuses to allow herself to be carried in, her submission may be compelled by the use of so much force as may be necessary."

Thus, on the whole, the general and main principle was clearly laid down by these eminent professors, but several questions have not yet been touched upon. Let us examine them in the next section.

### **Sect. VIII. Several Questions regarding the Affair, and my Observations on them.**

#### *I. When did the War commence?*

We have seen that it is quite beyond doubt that in commencing a war a declaration is not necessarily

required. The two learned professors made this clear in their letters. Still as a matter of fact we have not yet investigated the question of the exact time of the outbreak of the Chino-Japanese war, and on this point the respective views of the two professors seem to differ. Summing up all opinions expressed on this point, we may classify them under the following three heads :—

A. The war might have commenced with the stoppage of the *Kow-shing* by the Japanese navy.

Professor Holland seems to be of this opinion. He wrote a letter, as mentioned above, before it was known that three hours prior to the occurrence of this act hostilities had taken place between Japanese and Chinese men-of-war. He says :—" I hold that the acts of the Japanese Commander in boarding the *Kow-shing* and *threatening her with violence in case of disobedience to his orders were acts of war.*" He continues :—" the *Kow-shing* had notice of the existence of a war, at any rate from the moment when she received the orders of the Japanese commander." Thus in his opinion the war between Japan and China was commenced by the stoppage of the transport.

As a result of his view the Japanese could justify themselves without showing that the war had already been commenced *de facto* between Japan and China by the acts of hostility committed elsewhere, and the stoppage itself opened the war *de facto*.

B. A war *de facto* must be commenced by an act of hostility, and not merely by a search.

The opinion of Professor Westlake could be classified under this head. He says :—" It is true that the commencement of war *de facto* is only valid in international law as between the parties to the war so

commenced, neutrals being entitled to notice before they can be made liable to the peculiar responsibilities which a state of war imposes on them,.....the Japanese could not make the *Kow-shing* a belligerent by attacking her. In order to justify themselves against her neutral owners and the neutrals whom she carried, *they must show either that war had already been commenced de facto between China and Japan by acts of hostility committed elsewhere, or that the Chinese fleet, of which the Kow-shing formed a part, was engaged in a service the completion of which Japan could not be expected to permit.*"

C. The war already commenced before the actual fighting at Phung-do Island, and it was opened at the time of the departure of the Japanese navy.

This view was held by some of the writers. Mr Nagao Ariga says :—"Quel est alors le fait qui fut considéré par le Japon comme premier acte de la guerre sino-japonaise? Sont-ce les agissements des Chinois à l'égard des Japonais, qui précédèrent la submersion du *Koshung*? Ou est-ce cette submersion elle-même? D'après moi, les relations pacifiques sino-japonaises ont été rompues le jour où, en présence du refus de la Chine d'accepter l'ultimatum qui lui avait été adressé, le Japon notifia au gouvernement de Peking qu'il agirait seul en vue d'accorder des réformes à la Corée et que, quelles que fussent les éventualités qui surviendraient dans l'avenir, toute la responsabilité en tomberait à la charge de la Chine. Et les hostilités ont été ouvertes le jour où la Chine expédia ses hommes et où, en revanche, le Japon envoya ses vaisseaux de guerre, c'est-à-dire le 23 juillet, date qui précède de quelques jours la submersion du *Koshung*. Il me paraît inutile d'insister davantage sur ce point."

The above are the three principal opinions regarding the time of the outbreak of the war. Let me add the following observations on them:—

Whether a war can be commenced by an act of search or whether it must be commenced beforehand by some acts of hostility committed elsewhere, is a difficult legal question, and I think there is no necessity to decide it in the present case.

For as a matter of fact, the forces of the two countries came into contact at 7.5 a.m. on the 25th of July, 1894, when they began to fire on each other, and a fierce engagement ensued. This was the outbreak of the recent war *de facto*. It was nearly three hours after the first shot that the Japanese man-of-war sent a prize crew to the *Kow-shing*, and seven hours after the same that the *Kow-shing* was sunk.

Hence if the above facts were only generally known, there would be no necessity to discuss whether the Chino-Japanese war commenced by the search of the *Kow-shing* or not; and I do not venture to decide which of the two professors' opinions would be the more sound from a legal point of view.

As to the third opinion above-mentioned, I unhesitatingly pronounce it incorrect. In fact, Japan despatched an army on the 10th of June, 1894 and also on the 23rd of July. According to that view the commencement would be the 10th of June. The first transportation of the Chinese army occurred about the 20th of July, so the commencement of the war on the Chinese side would be the 20th of July. It must be noticed what a war *de facto* is. Preparation for hostilities is not a war *de facto*. In war *de facto* the contact of both parties is required. Suppose a case that the parties were brought to the brink of war,

and a certain section of the army or navy of both moved to a certain distance from their original stations (such cases often occur, especially as regards a navy, when some international difficulty arises), but that before the contact the parties were restored to a good understanding, for instance by an arbitration. In such a case would the upholders of the third opinion maintain that these parties restored peace after a certain war *de facto*? A contact of the opposing parties and an engagement of forces are necessary elements of war *de facto*, and consequently the 23rd of July could not be deemed the commencement of the recent war.

The authoritative view of the Japanese government also coincided with my view. It runs thus:—

“Let it be known that the commencement of the present war was the 25th of July of the 27th year of Meiji!

(Signed) COUNT ITO,

*Minister President of State.*

*September 10, 1894.”*

## II. *Was the act of the commander of the Naniwa justifiable?*

After the lucid letters of Professors Westlake and Holland, there is really no more room for discussion on this point. The war had commenced at 7.5 a.m. of the 25th, and from that time the Japanese navy had had the responsibility of enforcing belligerent rights. The explanation of the Japanese authorities was very clear. By that view, any vessel in the service of the enemy's government as transport, even though

her employment was the result of duresse<sup>1</sup>, was to be detained as hostile, and if the enemy's vessels were unfit to be sent to the port of adjudication, the commander was to *sink* the vessels after taking the crew, the ship's papers, and the cargo if possible, into his ship<sup>2</sup>.

This is the Japanese doctrine, and it is also recognized as right by the law of nations. The *Kow-shing* was a vessel in the enemy's service as a transport, and it was liable to detention as hostile. So the *Naniwa* ordered the *Kow-shing* to follow her to Japan, but it was found after long negotiations that the ship was not able to proceed to Japan, because the Chinese on board resisted the Japanese orders, which the captain himself wished to obey. The captain and the other officers were under compulsion, and for any attempt to follow the *Naniwa*—the Chinese would have shot them. The *Kow-shing* was thus rendered un-navigable by a cause more potent than winds or waves. Moreover, considering the position of the enemy's fleet at the time, the recapture of the *Kow-shing* was very probable. Then the Japanese commander acted under Art. 22 of the Japanese prize law and tried to take the ship's papers and the crew, but he was thwarted by the Chinese. He then ordered the neutrals on board to quit the ship, and proceeded to sink the *Kow-shing*. Thus all the steps taken by the commander were quite in accordance with the Japanese prize law and at the same time with the law of nations.

<sup>1</sup> The Japanese Prize Law, Art. 1. Lushington's *Prize Law*, Chap. XII. § 255.

<sup>2</sup> The Japanese Prize Law, Art. 22. Lushington's *Prize Law*, Chap. VI. § 101. Holland's *Prize Law*, Chap. XX. § 304.



III. *Was Korea an ally of Japan or a neutral at that time?*

*Can a belligerent exercise his right in the territory of a neutral?*

The principle of the inviolability of neutral territory was one of the earliest restraints placed upon belligerent operations. The rule does not appear to have been at first very strictly observed. Thus in the year 1793, the French frigate *Modeste* was captured by the English in the harbour of Genoa; no apology was offered for the violation of neutral territory, nor was the captured vessel restored<sup>1</sup>.

Several instances of the violation of neutral territory occurred even as late as the American civil war. The case of the *Caroline* is cited under neutrality, as illustrating the rule that overwhelming necessity may even justify a departure from this principle<sup>2</sup>. But as a principle of International Law, I am of opinion that the territorial sovereignty of neutrals must not be violated at all. Now in judging the present case which occurred in Korean waters, we could not find any violation of this principle on the part of the Japanese navy, because the territorial waters of Korea were not neutral. It was on the very morning of the first engagement, that is the 25th of July, that the Korean minister sent a note to the Japanese minister at Seoul asking him to dislodge the Chinese army from Korea. By that time, Korea was an ally of Japan, and that fact was certified by the treaty of alliance between them. It runs thus:—

In view of the fact that on the 25th of July, 1894, the Korean government entrusted His Imperial Majesty's envoy extraordinary

<sup>1</sup> See Hall, p. 604.

<sup>2</sup> See Pitt, Cobbett's and Snow's cases.

and minister plenipotentiary at Seoul, Korea, with the expulsion, on their behalf, of Chinese soldiers from Korean territory, the governments of Japan and Korea have been placed in a situation to give mutual assistance both offensive and defensive. Consequently the undersigned plenipotentiaries, duly authorized by their respective governments, have, with a view of defining the fact and of securing in the premises concerted action on the part of the two countries, agreed to the following articles etc.

Thus as a matter of fact, Korea was not a neutral but an ally of Japan, and consequently there is no necessity to discuss whether Japan could enforce the right of visit, search etc., in Korean waters, though we hold the principle of the inviolability of neutral territories. This question presented itself again a few days after the *Kow-shing* affair in the *Chao-Chow Foo* affair, to which I will refer subsequently (see the *Chao-Chow Foo* affair.)

IV. *Can a fleet of a neutral claim that belligerents should refrain from enforcing the right of visit, etc, on the high seas?*

This is a question not worth discussing, but it demands a passing reference because such a demand was actually made by a certain neutral naval officer.

A few days after the *Kow-shing* affair Vice-Admiral Sir E. R. Fremantle, who commanded the British fleet on the China station during the Chino-Japanese war, sent a note to the Japanese admiral, requiring that "the Japanese admiral would give orders to the ships under his command not to board, visit or to interfere in any way with British merchant vessels, observing that the English admiral had directed all British ships under his orders to afford protection to such merchant vessels, and not to allow them to be molested in any way."

To this the Japanese admiral replied, saying that "as the matters demanded by the English admiral belong to the sphere of international diplomacy and consequently are outside his official responsibility, those matters should be communicated directly to the Japanese department of foreign affairs."

The above is a general sketch of the communications on this point. The idea of the English admiral seemed to be not only to claim a right of convoy, which has never been recognized by British prize courts, but also to extend it over all waters of the Far East, where English warships were not actually engaging in convoy.

Soon afterwards the matter was settled without any difficulty. On August 11th the under-secretary of the Japanese foreign office received a letter from the English minister in Tokyo, stating that there must be some misunderstanding and that the English government would never try to interfere with a belligerent right<sup>1</sup>.

<sup>1</sup> On the 4th of Nov. 1895, Vice-Admiral Fremantle attended the dinner of the China Association held at the Hotel Metropole. In his after-dinner speech he referred to this affair. *The United Service Gazette* (Nov. 16, 1895) reported his speech to the following effect:

"He claimed that they (the British Navy) were neutral. He claimed also that as they were interested, and deeply interested, in preventing British trade being interfered with more than necessary by the paramount sea-power of Japan, it was his desire to prevent the operations of the Japanese causing any such interference. After the loss of the *Kow-shing* he considered himself justified in giving notice to Admiral Ito that *he would not have any British ship interfered with at all*, and, although this was subsequently somewhat modified, that was the rule during the greater part of the war." The present writer, while admitting that Admiral Fremantle's claim was modified as he said, could not believe that his principle was the rule during the greater part of the war. The English government would certainly never try to interfere with a belligerent right, as the English minister at Tokyo said.

V. *Can neutral war-ships restore the surviving soldiers to their own country, exacting no oath that they shall not take arms again?*

As already mentioned, the French warship *Lion* brought 45 Chinese soldiers to Chemulpo, and a German warship sent back 120 Chinese soldiers from the islands in the Korean waters to Tien-tsin. The action of the French man-of-war was very humane in rescuing the Chinese who were clinging to the masts of the sunken ship, but the act of the German vessel was not admissible from a legal point of view. The Chinese who were on the islands in the Korean waters were not in danger of their lives; on the other hand, it was said that they were displaying their usual lawlessness in plundering the villages of the islands. They belonged to the crack regiment of the Chinese army, and it might be expected that they would serve again as soldiers. To send back these soldiers to China was nothing but giving assistance to one of the belligerents. By the law of nations, any belligerent can release prisoners on exacting an oath that they will not take arms again. But there is no precedent for a neutral restoring soldiers to one belligerent without taking the trouble to exact such an oath from them.

## CHAPTER II.

### THE GAELIC AFFAIR.

WHILE the Japanese main squadron was engaging in offensive warfare abroad, the protecting squadron at home was very busy with defensive manœuvres, perpetually watching the coasts and cruising from island to island. In September, 1894, the home squadron searched an English and a French ship, respectively named the *Gaelic* and the *Sydney*, in order to arrest two Americans and a Chinese who had embarked on these vessels with the object of entering the military service of China. This search awoke some diplomatic discussion between the English minister and the consuls of the United States and France on the one side, and Japan on the other. For the sake of clearness we will begin by giving the following list of contraband persons<sup>1</sup>.

#### **Sect. IX. The Contraband Persons and their undertaking.**

*John Wild, George Cameron and Ching-fan Moore, as contraband Persons.*

John Wild was a citizen of the United States, naturalized in 1868, and born in England. His age was 52 in 1894. His residence was 111, River St.,

<sup>1</sup> This term is used in accordance with Art. 8 of the Japanese prize law.

Providence, Rhode Island, and by profession he was an inventor.

George Cameron was a friend of John Wild, born in Scotland and naturalized in the United States in 1891. Aged 28 in 1894. His residence was 204, Broadway, New York. During the civil war in Brazil he had served as fighting master of the *Nichteroy*, a Brazilian ship, and from the beginning of June he had been in the employ of the Hotchkiss Ordnance Company connected with the manufacture of the Howell torpedo.

Ching-fan Moore was the secretary of the Chinese legation at Washington. He was a native of Canton. He was 39 years old in 1894. He spoke English fluently and always served as an interpreter at the legation.

The three became acquainted in the following manner :

John Wild was a man of an extraordinarily adventurous nature, and was very proud of a secret invention which he had made. Being very anxious to sell this invention to China, he at last succeeded in obtaining an interview with the Chinese minister at Washington, through the introduction of a member of the Senate. He persuaded the Chinese minister to buy his marvellous invention, giving him the following guarantee<sup>1</sup>.

“Be it known that I, John Wild of Providence, Rhode Island, U. S. A. being in possession of the secret use of certain destructive forces which, if possessed by the Chinese Government, will enable the Government to put a speedy end to the war now being waged between China and Japan at small cost and without losing ships or men except by a stray shot at long range thereby, what I guarantee to show is as follows :—

<sup>1</sup> This was taken from his hands at Kobé.

(1) How to veil the approach of torpedo boats in daylight or in search-light.

(2) How to land troops at any given point unseen by the enemy.

(3) How to destroy a whole fleet whether at anchor or under way.

(4) How at a small expense (say about \$300) an ordinary ocean steamer can be made more than a match for the most powerful battle-ship.

(5) How to capture warships without destroying them.

(6) How to silence forts, water batteries, torpedo stations, ships etc. without the use of gunpowder or torpedoes.

I guarantee to explain how to do the above, and I will not ask one dollar if the information is not satisfactory. I only require the preservation of the secret which must be guaranteed inviolable.

JOHN WILD."

These statements were so ridiculous that anyone with common sense could hardly believe them. But the Chinese minister was so eager to render some service to his country that he blindly allowed himself to entertain the curious proposal. At this time Ching-fan Moore presented himself as an interpreter, and this was the first meeting of John Wild and Ching-fan. Afterwards these two persons were in continual communication about the adventure. On the last Sunday in September, 1894 Wild called on Ching-fan in the Narragansett Hotel, and desired to enter into a contract on the following terms<sup>1</sup>:—

"TERMS OF SALE OF SECRET."

"An agreement must be made in plain English with the Government seal attached thereto.

(1) Upon revealing my secret \$10,000 in gold or its equivalent must be paid to me.

(2) After the government has tried my secret with success, then the said government shall pay me one million of dollars in gold or

<sup>1</sup> Taken from Ching-fan at Kobé.

its equivalent in United States money in such sums at such times as may be agreed upon hereafter.

(3) Furthermore, on all ships captured by the government by use of this secret, the said government shall pay to me fifteen per cent. of the actual valuation of the said ship or ships as prize-money.

(4) Furthermore, on all warships destroyed by the principle thus revealed, the said government shall pay me ten per cent. of the valuation as prize-money.

(5) Furthermore on all vessels used as transports that may be destroyed as above, the government shall pay me five per cent. of the actual valuation in money as above described."

It would seem that they came to an understanding on these conditions. Then John Wild persuaded George Cameron to join him as his assistant. The agreement between them was that at whatever time John Wild got the expected sum of money from the government, he should pay five per cent. of the sum to George Cameron, and besides this that he should give him a certain share by way of a monthly payment. John Wild then introduced Cameron to Ching-fan in his house. I have in my possession many letters written by Ching-fan and Wild relating to the enterprise, which we seized from them at Kobé. They are full of romance and interest, but I refrain from quoting from them, since they are of no value for our immediate purpose.

Before long all the details were settled and the day fixed for starting. The Chinese minister handed Wild a letter of introduction to Li Hung-Chang. In that letter the following passage is to be found :—

"Since the naval engagement took place, foreigners have sent letters to me, recommending themselves for service for our country, and at the same time several factories also have offered to sell newly invented military machines. There are so many of these letters that I cannot enumerate them here. Among the applicants, I found a certain John Wild, who had invented some secret for



destroying an enemy. He guaranteed to me that he could utterly destroy all the enemy in the course of a few months, and that he could silence forts, water batteries, torpedo stations, ships etc. without the use of gunpowder or torpedoes. At first I did not believe him. But after making many enquiries I am sure that he is not a mere visionary. He was said to have served in the Brazilian navy at the beginning of this year, when an insurrection broke out there, so I wrote to the Brazilian minister to assure myself of the fact and received an answer testifying to his ability. Our secretary Moore Ching-fan is especially eager to take part in the enterprize. Hereupon I ordered Ching-fan to go to Tien-tsin, together with Wild and his friend George Cameron. We beg your Excellency to vouchsafe them an interview and to allow them to carry out their undertaking."

The above letter shows their mission was not simply private, but of a semi-official character.

Thus everything went on very smoothly, and at the end of September, 1894, these three adventurers met together at Providence. The following advices, which reached us, throw great light on their doings in that city :—

"Ching-fan arrived here yesterday. He is disguised, not wishing to be recognized. He is dressed in ordinary American clothes and wears a wig over his queue—a dress that gives him the appearance of a Japanese. He is a personal friend of Major Oliver Alers of the Adams Express Company, who is acting as host this afternoon and is showing Mr Fan over the city. At the Narragansett, the Chinese has registered as C. F. Moore, and his identity is very cleverly concealed. In company with Messrs. Alers, Cameron and Wild, he visited several of the big manufacturing concerns in the city and will start to-morrow, he says, for San Francisco with the two gentlemen mentioned, thence to sail for Hong-Kong."

On the 10th of October they started from Providence for San Francisco, where they received \$6000 from Chinese who voluntarily subscribed to help their enterprise, and on the 16th they went on board the

*Gaelic*, in which Wild registered himself as Brown, and Cameron as Howie.

The Japanese consul H. Shimamura also embarked on the same ship, and as soon as she arrived at Yokohama on the 2nd November, the consul informed the Japanese authorities of the arrival of the adventurers.

### Sect. X. The search of the Gaelic.

As soon as the *Gaelic* arrived at Yokohama Commander H. Takei went on board to arrest the contraband persons and to search the ship for any contraband she might carry. The search party failed in its first object, because the adventurers had already adroitly transhipped from the *Gaelic* to the *Sydney*, which started from Yokohama for Kobé as soon as the adventurers embarked. But there was still the possibility of finding any contraband goods left on board the *Gaelic*. So Commander Takei demanded to be shown the ship's papers. The captain at once refused, for they were not in his ship, but at the English consulate. Next, the commander asked to see all the holds. This was also denied on the ground that no one who had not a permit from the English consul or the manager of the company could make any search. Finding that persuasive measures were of no avail, the commander enforced the belligerent right and searched the ship. On the 5th, the commander again went on board and asked to see the ship's papers, but the captain replied that they were not yet in his hands. The time for sailing was very near, and still the papers had not arrived from the English consulate. By waiting until the time had nearly expired, the

commander at last succeeded in examining the papers, which were brought just before the ship sailed. On examination he could find nothing illegal in them ; so he released the ship. The following is a copy of the log-book of the *Gaelic* bearing the date of search.

"This certifies that we noticed at 5 p.m. a Japanese government transport, under their naval flag, with a body of marines on board, followed by five torpedo-boats, under their naval flag, enter this harbour. The transport anchored about one cable from our port bow and the torpedo-boats about the same distance, one on each quarter.

Nov. 5th, 6 a.m. At daylight, we observed in addition to the above that two government sampun with four persons in each had stationed themselves, one on each beam, at a distance of 50 yards.

At or about 6.30 a.m. Commander H. Takei, I. J. N., with a staff of naval officers and an interpreter boarded this ship and informed the master that he wished to search the ship and examine the cargo, as information had been received. The master informed them that he had no power to permit it, that he was in the hands of his agent, consul and minister, and that the ship's documents were to be procured on shore at the agency and consulate under whose jurisdiction he was ; this was repudiated, and their reply was that we should look to the ship-papers only.

Such being the master's position he permitted them, under protest, to go through the ship, accompanied by the chief officer with instructions to let the Japanese officers see for themselves whatever they wished.

During their inspection of the different holds and coal bunkers they informed the chief officer that No. I hold must be discharged. When the inspection was completed the staff left the ship for the shore. Returning about noon they requested to see the ship's manifest. The purser was sent on shore for it, and after looking through the manifest they decided to allow the ship to proceed when ready for sea, informing the master that they declined to make an entry in the log-book as the ship was strongly suspected, and that a similar examination might occur again.

W. G. PEARNE, (master).

J. H. RINDER, (mate)."

The above extract gives a good idea of what was in the captain's mind. He did not approve of the enforcement of belligerent rights, for in his opinion the ship was under the jurisdiction of the English consul. Hence the searching met with opposition, and some diplomatic discussion between the English and Japanese ministers ensued, which however did not give rise to any difficulty.

Now let us proceed to add some observations on this affair.

### Sect. XI. Observations on the Gaelic Affair.

*Can the destination of the cargo in a ship be decided by the destination of the ship?*

In the case of the *Gaelic* the above question was discussed by a prominent Englishman in Japan, his arguments being answered by the Japanese themselves. The English view was as follows :

“That as the *Gaelic* was after its departure from Yokohama proceeding to the port of Nagasaki and thence was bound direct to a neutral port, the Japanese government did not possess the right of search ; that while the British government recognized that the Japanese government was entitled by its accredited officers and in the exercise of its belligerent right to ascertain the destination of any British ship suspected of carrying munitions of war, so soon as it appeared to the satisfaction of the boarding officer that the ship had a *bonâ fide* neutral destination his right to continue the search terminated ; that the neutral destination of the vessel was conclusive as to the destination of the goods on board ; that even though the goods may have had an ulterior hostile destination

they were not liable to seizure while on board a vessel having a *bonâ fide* neutral destination ; that in the case of the *Gaelic* there was no good ground for believing that the vessel after her departure from Japan was really intended to proceed to Amoy ; and that vessels proceeding to Hong-Kong as their final port of discharge without calling at any Chinese port on the way were, together with the cargo and passengers on board, to be treated as having a neutral destination."

To this view, the Japanese answer was as follows :

"If the geographical and commercial relation between Hong-Kong and China were taken into consideration, it is quite impossible to insist that the destination of a ship could decide the destination of the cargo on board. It was the usual custom for ships belonging to the Occidental and Oriental Steamship Co., to which the *Gaelic* belonged, to carry goods from San Francisco to the several ports of Japan and China. In general the cargoes destined for Shang-hai and certain other ports of China were trans-shipped at Yokohama. Those for the southern parts of China were carried the whole way by the original ship. It was also well known that the consignor and the consignee of cargoes were in general Chinese. But the most important fact was that ships of the Occidental and Oriental Steamship Co. often called at Amoy, whenever profit might be safely expected. Consequently, in the case of the *Gaelic*, the Japanese government had ample reason for suspecting that the ship might call at intermediate ports before reaching her final destination, if sufficient inducement were offered.

The Japanese government had an advice from America, regarding three contraband persons, before the *Gaelic's* arrival at Yokohama. On the arrival of

the *Gaelic* the details of their enterprise were well known to the Japanese authorities, and at the same time there was good reason to suppose that they brought some contrivance or material intended to injure the Japanese fleet. It should be carefully noticed that though these persons were destined for Hong-Kong according to the ship's papers, they suddenly started off for Shang-hai. It shows how little their destination on paper could be trusted. Under such circumstances Japan could hardly be expected to refrain from searching the ship simply because the destination on the ship's papers was a neutral port.

According to the treaty of 1858 between England and Japan, English ships were not required to forward their ship's papers to the Japanese customhouse. Moreover, as the *Gaelic* was a mail steamer, by virtue of Art. 2 of that treaty she did not present the manifest to the customhouse at Yokohama. Consequently it was necessary for the Japanese authorities to come on board, in order to learn the real destination and nature of her cargo. And when the Japanese officers did go on board and still no papers were forthcoming, surely a search was absolutely necessary."

Let me here add a few observations on this question, if it can be called a question. In my opinion the Japanese government had a good ground for searching the *Gaelic*, and the opposite view appears to me to be due to a misunderstanding of International Law. In that view, "if the destination of a ship was a neutral port, the belligerent should not continue the search, *and even though the goods may have an ulterior hostile destination, they are not liable to seizure while on board a vessel having a bonâ fide neutral destination.*"

The error of this view is sufficiently shown by quoting the discussion on the *Stephen Hart*.

In the case of the *Stephen Hart* the claimants insisted that if a neutral vessel with a cargo belonging to neutrals be in fact on a voyage from one neutral port to another, she cannot be seized and condemned as a lawful prize although she be laden with contraband of war, unless she is taken in the act of violating a blockade ; and they further maintained that the *Stephen Hart* was at the time of her capture a neutral vessel, carrying a neutral cargo from London to Cardenas—both neutral ports—in the regular course of trade and commerce. As regards this case J. Betts gave a very clear decision. He said that “*the question whether or not the property laden on board the Stephen Hart was transported in the business of lawful commerce is not to be decided by merely settling the question as to whether the vessel was documented for, and sailing upon, a voyage from London to Cardenas. The unlawful character of the carriage of contraband was not determined by deciding whether the immediate destination was to a port of the enemy or not ; on the contrary, if contraband goods were ultimately destined for the direct use of the enemy’s army or navy, the transportation would be illegal. The proper test was whether or not the goods were intended for sale or consumption in the neutral market.*”

If, as is only reasonable, we admit this decision to be an established precedent, there is no necessity for further discussion on the *Gaelic* affair.

Anyone with common sense can soon deduce that if Japan had admitted all neutral vessels to be exempt from the enforcement of belligerent rights simply because they were ostensibly going to Hong-Kong,

which is in its geographical position actually a part of China, then all neutral vessels would have been exempt from capture, even though they carried contraband of war. Some one may object by maintaining that after the departure of the contraband persons from the *Gaelic*, there was no longer any necessity for a search. But we might reasonably suspect that although the contraband persons had escaped, there might still be contraband of war left. Consequently the Japanese navy had the right of search.



## CHAPTER III.

### THE SYDNEY AFFAIR.

#### **Sect. XII. The search of the Sydney.**

As stated in Part I., Chapter II., the three contraband persons,—John Wild, George Cameron and Ching-fan Moore—transhipped from the *Gaelic* to the *Sydney* at Yokohama for Kobé. The *Sydney* arrived at Kobé on the evening of November 4th, 1894. By midnight a telegram from the foreign minister arrived at the customhouse, and another from the under-secretary of the naval department reached the *Tsukuba*, a Japanese man-of-war, which was then lying in the port. The master of the customhouse was informed that the *Sydney* would start from Kobé at 7 a.m. on the 5th. Only a few hours remained. Circumstances allowed of no hesitation; so he at once went on board the *Sydney* and asked her master to stay a little longer at Kobé, until the prize officer should finish his search. This request the captain refused, as the ship was a mail steamer, and her master had not the power to postpone her departure even for a few hours. Meanwhile a prize officer came from the *Tsukuba*, and the French consul also presented himself on board. The searching was carried out, and a good deal of incriminating evidence

was discovered. The following statements by Lieut. Arao, one of the prize officers, will give the details :—

“At 4.10 a.m. on the 5th November, a long telegram arrived from the under-secretary of the imperial Japanese naval department. While we were transcribing the telegram a customhouse officer came to the *Tsukuba*, and informed us that the *Sydney* would start at 7 a.m. with contraband persons on board ; that the customhouse officers were endeavouring to detect those illegal persons, but that it was quite beyond their power to make any search of the ship, and that they were anxiously awaiting the arrival of naval officers. Lieut. Mizokuchi was ordered to proceed in haste to the *Sydney*. Meanwhile part of the telegram had been transcribed, the names of the contraband persons were known to us, and I was ordered to go without delay to the ship. When I arrived there I found Lieut. Mizokuchi in the ship-master's room, negotiating with the master and the French consul about the matter. We informed the master that we intended to make a search of the ship. Hereupon the French consul said that he had no objection to the enforcement of the belligerent right, and that he already had instructions about this affair from his minister and was not to interfere. However he said that if evidence of her having contraband on board were not forthcoming the Japanese government would have the responsibility of the search. We began to search and first of all desired to see the cargo-book, which the master willingly showed us. Then we examined the passenger's list, in which we soon discovered the names of George Howie, John Brown and Ching-fan Moore, who had embarked on the *Sydney* at Yokohama. Accompanying the French consul and the master we went down in haste to Moore's cabin, and ordered him to show us all the contents of his baggage ; in this we found a letter from the Chinese consul at San Francisco to a Chinese general at Shan-tung. I asked Lieut. Mizokuchi to further examine Ching-fan Moore, and I myself went to John Brown's cabin, accompanied by the French consul. On seeing him I asked for his card. Upon this request John Brown showed me a label on which was written ‘Wild and Brown—joint invention.’ He explained that his name was Brown, and his friend's name Wild. Then I asked him to let me see the contents of his baggage, and among many other things I found a naturalization paper, in which I saw the name of Wild. After this discovery he could no longer conceal his real name. Next we came to George Howie's cabin, and in the end

we found evidence that he was Cameron. Meanwhile the first lieutenant of the *Tsukuba*, Commander Ishi-i and the United States consul came on board. They went in to see John Wild again and conducted a cross-examination from which we succeeded in gaining valuable information. The correspondence between Wild and Moore, the guarantee for the secret, the terms of the sale of the secret, and the Chinese ambassador's letter to Li Hung-Chang were discovered. It was now of course evident that the *Sydney* had these contraband persons on board, so Commander Ishi-i required that they should be given up, but the French consul and the master objected. At 8 p.m. a telegram came from the military head-quarters, instructing the captain of the *Tsukuba* to release the *Sydney* after taking off the contraband persons. Hereupon Captain Kuro-oka ordered Commander Ishi-i to arrest the three adventurers, and bring them to a hotel called The Ji-yu-tei."

The above is a concise account of the arrest of the contraband persons on the *Sydney*.

### Sect. XIII. The Protests of the Consuls of France and the United States.

As regards the *Sydney's* detention the Messageries Maritimes Company claimed damages, and the French consul lodged a protest. They were as follows :

*Vice-consulat de France à Kobé et Osaka.*

RÉPUBLIQUE FRANÇAISE.

KOBÉ, le 5 novembre, 1894.

COMMANDANT,

Le paquebot-poste français *Sydney* appartenant à la Compagnie des Messageries Maritimes a été ce matin, peu de moments avant l'heure de son départ fixé à 7 heures, arrêté par un détachement de marins japonais en armes escortant un officier chargé par vous d'exercer à bord de ce bâtiment votre droit de visite.

Le motif de cette détention était, autant qu'il m'a paru résulter des déclarations de votre officier, la présence supposée à bord de contrebande de guerre.

Sans vouloir m'opposer à l'exécution d'ordres que vous serez à

même d'imposer par la force, je crois devoir vous faire observer que si des marchandises de contrebande de guerre ou toute autre chose rentrant dans la catégorie de contrebande de guerre ont été embarquées sur le *Sydney* elles n'ont pu l'être soit à Yokohama soit à Kobé qu'en passant par la douane japonaise, à moins qu'il ne soit prouvé que le *Sydney* a pris directement à bord des colis non déclarés en douane et non portés sur le manifeste en violation des traités et des règlements commerciaux.

Dans ces conditions j'ai l'honneur de vous informer que je proteste formellement contre l'action des autorités japonaises, et que je rends le gouvernement Impérial responsable de tout dommage pouvant résulter tant pour la Compagnie que pour les tiers de la détention du paquebot ainsi que de toutes les conséquences directes ou indirectes de la détention, soit que l'on ne trouve à bord (mot illisible) marchandise ou objet suspect, soit même que l'on en découvre—le cas de fraude susmentionné étant naturellement excepté.

Agréez, Commandant, l'assurance de ma considération la plus distinguée.

(signé) P. DE LUCY-FOSSARIEU,  
*vice-consul de France.*

MONSIEUR KURO-OKA capitaine de vaisseau commandant du  
*Tenkoubai Kan.*

*L'agent de la Compagnie des Messageries Maritimes à  
Kobé au Vice-Consul de France à Kobé.*

KOBÉ, 6 novembre, 1894.

MONSIEUR LE CONSUL,

J'ai l'honneur de vous prier de vouloir bien informer officiellement les autorités japonaises que je proteste au nom de la Compagnie des Messageries Maritimes contre le délai infligé au départ du paquebot *Sydney*, et que je les rends responsables non seulement des dépenses de toute nature qui ont pu être occasionnées par ce retard de 17 heures mais aussi de toute indemnité qui pourra leur être demandée par la compagnie ultérieurement.

Veillez agréer etc.,  
(signé) l'Agent *Tubiot.*

Pour copie conforme,  
P. DE LUCY-FOSSARIEU.

No. 331.

KOBÉ, le 7 novembre, 1894.

MONSIEUR LE PRÉFET,

J'ai l'honneur de vous remettre ci-joint une copie authentique d'une protestation qui m'a été adressée par l'agent de la Compagnie des Messageries Maritimes à Kobé à l'occasion de la détention de 17 heures qu'a subie le paquebot *Sydney* à la date d'avant-hier du fait de l'autorité japonaise.

Je vous serais reconnaissant de vouloir bien faire parvenir au gouvernement impérial cette protestation et m'en accuser réception.

Agréez, Monsieur le préfet, l'assurance de ma haute considération.

(signé) P. DE LUCY-FOSSARIEU,

*vice-consul de France.*

MONSIEUR SUH KOHEE, préfet du Ken di Hiogo Kobé.

At the same time, the United States consul sent the following note to Captain Kuro-oka :

"No. 1818.

CONSULATE OF THE UNITED STATES.

HYOGO, November 1st, 1894.

To

KURO-OKA TATEWAKI,

Commanding the Training Ship *Tsukuba Kan*.

SIR,

I have the honour to inform you that information has been received by me that two American citizens named respectively John Wild and George Howie were arrested by your authority last night on the French mail steamer *Sydney*, and are now held under a strong military guard at the *Ji-yu-tei Hotel* in Kobé. No information having been received by me that martial law has been proclaimed by the Japanese government at this port, I deem it my duty to protest and by this letter do hereby solemnly protest against the arrest and detention of the foresaid persons, holding you and whoever may be concerned responsible for the consequence of the said unlawful arrest and detention.

I have the honour to be,

Your obedient servant,

E. J. SMITHERS,

*Consul."*

But matters went very smoothly and no serious discussion took place. Subsequently the United States approved of the action of the *Tsukuba*.

#### **Sect. XIV. The Prosecution of the Contraband Persons.**

After being examined, it was decided that Moo-ching-fan, the Chinese, should be kept in Japan during the war. The two Americans also were examined at Kobé, and they confessed under oath everything relating to their enterprise. The statement by George Cameron was as follows:—"I do hereby sincerely and truly state under oath and by free will swear as follows viz:

"that:—

"(1) I was born in Dundee, Scotland, in the year 1866 and naturalized in the United States of America on the 3rd of November, 1891.

"I am now 28 years of age.

"My name is George Howie, but when I came to the United States I took the name of Cameron which was my mother's name. About four weeks before my starting from the United States I resumed the name of Howie.

"My address is 204, Broadway, New York.

"(2) From the beginning of June 1894 to the 3rd of October I was employed in the Hotchkiss Ordnance Company.

"(3) When an insurrection broke out in Brazil I was on board the *Nichteroy*, the dynamite cruiser of the Brazilian Government, and served as fighting master.

"(4) Four days before our starting I was introduced to Mr Moore in Mr Wild's house.

"(5) Mr Wild promised me that he would give me five per cent. of his income, whenever he got it by selling his secret, and that besides that he would pay me a certain sum monthly.

"(6) Mr Wild promised to pay me my travelling expenses.

"(7) Messrs Moore, Wild and myself started from Providence together, and we trusted that Mr Wild would be successful in his enterprise.

"(8) It was quite reasonable that Captain Kuro-oka should arrest us and keep us until the end of our trial, and I am satisfied with the treatment we received at his hands and at the hands of his officers.

"(9) After my release I will never go to China until the end of the present war, and I will never serve the Chinese government or enter into a contract with any person who represents the Chinese government under any circumstances whatever.

GEORGE HOWIE,  
formerly GEORGE CAMERON.

*Kobé, November 10th, 1894."*

John Wild's statement was nearly identical with this. On the next day George Cameron again swore that he would never try to help China in any way, that he would never give any report to the Chinese government or its representative, and that he would not sell his secret or make any contract with China during the war under any conditions; and he said that he sincerely regretted coming with John Wild to China. John Wild also made a statement under oath in due form to the same effect. These adventurers were set at liberty on parole, and so much confidence was placed in their honesty that they received \$500

each to defray their expenses home. It was to our great surprise at the time of the surrender of the Chinese squadron that we found George Cameron among the foreigners serving in the Chinese navy. Nothing is more ignoble and disgusting than the dishonesty of breaking one's word of honour as a gentleman, and we greatly regretted to find such a person as Cameron among Christian nations, who are always believed to be civilized and to hold high ideas of morality.

The occurrence was full of interest not only for ordinary narrative purposes but also for the subject of our investigation. We will treat it further in Part II Ch. II of this book.

#### **Sect. XV. Observations on the Sydney affair.**

As already stated the *Sydney* was visited and searched, and two neutrals together with their Chinese companion were arrested, the contract under which they sold their services to the Chinese for the purpose of destroying Japanese men-of-war being found in their possession.

In all these proceedings the Japanese government acted within its right as a belligerent, but it was objected that the operation was conducted in the face of consular protests. This objection betrays a strange confusion of ideas. The procedure appertaining to consular jurisdiction and the procedure sanctioned by belligerent rights are absolutely distinct. Consular jurisdiction is an exceptional system established to discharge certain judicial functions of which Japan has temporarily divested herself for the convenience of foreigners residing in her realm. Its sphere, being



strictly limited to matters of civil and criminal law, cannot possibly have any extension to questions arising out of a state of war. It has been repeatedly alleged that the Japanese government's proper procedure would have been to address itself to the consular authority in order to procure the search of the *Sydney* and the arrest of three of her passengers<sup>1</sup>. But to appeal to a consul would have been a renunciation of belligerent rights on the part of Japan, and to act upon the appeal would have been on the part of the consul to act without any legal authority.

Some critics appeared to draw a hard and fast line between contraband of war carried in a neutral bottom and passengers travelling by a neutral ship, and cited the case of the *Trent*. But this is nothing but a gross misunderstanding of the precedent.

In the case of the *Trent* it was established that the conveyance of civil officers could not be considered as a breach of neutrality, but in the *Sydney* affair the conditions were quite different. Those who embarked on board the *Sydney* were not diplomatic agents, but were going to another belligerent with the purpose of entering the hostile service.

It is said that the *Sydney* affair was referred to the law officers of the French Republic, and that the Japanese action was pronounced legal by them. It certainly ought to be so, because the exercise of an immemorially acknowledged belligerent right can scarcely have provoked the censure of intelligent and responsible officials.

<sup>1</sup> See the *Japan Weekly Mail*, Nov. 10, 1894.

## CHAPTER IV.

### THE YIK-SANG AFFAIR.

**Sect. XVI. The Enforcement of Belligerent Rights at the Taku Bar by the Tsukuba, and the first Visit to the Yik-sang.**

Art. IV of the treaty of armistice between Japan and China runs thus :

The movement of troops and the transport of military supplies and all other contraband of war by sea shall be subject to the ordinary rules of war and shall consequently be liable to capture.

By virtue of this treaty, the Japanese navy was actively engaged in enforcing the belligerent rights of its country, and the number of cases of visit and search suddenly increased after the ratification of the treaty.

At the beginning of April, 1895, Admiral I. Inouye gave the following instructions to Captain J. Kuro-oka, the commander of the *Tsukuba* :

“(1) All ships which are outside the Taku Bar must be visited.

“(2) If there are neutral warships present, care must be taken to make sure whether the neutral merchant-men are under convoy or not, and if they are under the protection of the men-of-war a declaration to that effect should be obtained.”

Acting under these instructions the *Tsukuba* left Port Arthur for the Taku Bar at 7.10. a.m. on the 5th of April. At 9 a.m. on the 7th, she arrived at her destination and anchored at a spot of which the following are the bearings:

Taku South Fort.  
N.W. b. W.  $\frac{1}{4}$  W.  
dist. 11 miles.

The English cruiser *Edgar* happened to be anchored there, and immediately the two commanders paid visits to each other. The English commander said that he was instructed by Admiral Fremantle not to interfere with any belligerent rights, and it was ascertained that the merchant vessels were in no case under convoy. Then the *Tsukuba* began to visit every ship lying there. The following is the *Tsukuba's* record of visit and search at Taku:

“April 7th.

2.35 p.m. The *Edgar* left Taku. At that time there were only two neutral ships at the place.

3 a.m. Two more ships, an English and a German, arrived at the bar. A prize crew under Lieut. Sanader then went to visit all four vessels. They were named respectively the *Wo-sang*, the *Chung-King*, the *Kai-sang* and the *Tei-ri*.

April 8th.

10 a.m. We proceeded two miles towards the coast. The ship's position is now,

Taku South Fort.  
N.W. b. W.  
dist. 9 miles.

11.30. The English steamer *Yik-sang* came to Taku. Lieut. Arao and Sub-Lieut. Takagi were sent to visit her.”

This was the first visit to the *Yik-sang*. Let us here quote the official report of the prize party regarding it.

## THE REPORT OF LIEUT. ARAO.

"At 11.45 a.m. of the 8th I visited the British steamer *Yik-sang* by order of the commander of the *Tsukuba*, accompanied by Sub-Lieut. Takagi. In accordance with prize law we examined all the ship's papers. The result was as follows :

- |              |   |
|--------------|---|
| N.           | British.  |
| O.           | Indo-China Steamship Navigation Co., whose agents are Jardine, Matheson & Co. |
| Destination. | Che-foo.  |
| Cargo.       | Rice, wheat, and other provisions.  |

One thing seemed very strange. In the list of cargo a large amount of *bamboo-steel* was found. We inquired of the captain what was meant by the term *bamboo-steel*. He said that it was nothing but unworked metal, and he added that if we had any suspicions he would show us the goods. However, we had confidence in him and did not venture to search. And so we returned after entering our doings in the log book."

Such was the result of the first visit to the ship, on the day before her detention.

**Sect. XVII. The detention of the Peking. The second Visit to the Yik-sang, its Search and Detention. The Release of the Peking.**

I. *The Detention of the Peking.*

On the morning of April 9th the search party of the *Tsukuba* visited the *Peking*, a lighter of the Taku Tug and Lighter Co., and found 270,000 cartridges on board. On an examination it was ascertained that these contraband goods were transhipped from the *Yik-sang*. The following official report of Lieut. Arao gives the facts very clearly :

"Early on the morning of the 9th we visited the *Tsung-chow*. On our return by 8 a.m. we visited the *Peking*, a lighter of the Taku Tug and Lighter Co., and proceeded to search her. In the cargo book we found a page with the following entry :

69 Bags.	Piece goods.
220 „	Steel bars.
2400 „	Rice.

We suspected the nature of these *steel bars* and ordered one of the boxes to be opened. On doing so we discovered five smaller boxes contained in it, and on each of the smaller boxes the words 'cartridges for Mausers,' or 'cartridges for magazine rifles' were written. On further examination the whole number of cartridges showed itself to be no less than 270,000. We at once distributed our crew at various important points of the ship to prepare for any emergency, and at the same time we fired a signal to give information to the *Tsukuba* that we had discovered contraband goods. Then we examined Li-king, the Chinese captain of the *Peking*, who assured us that these contraband goods were transhipped from the *Yik-sang*. Meanwhile the agent of the Taku Tug and Lighter Co. came to the *Peking*. We declared the ship to be under detention and asked the agent whether he had any objection to this declaration, to which he replied that he had none. It was 9 a.m. before we finished all the formal details for her detention."

## II. *The second visit to the Yik-sang, its search and detention.*

There could be no stronger evidence than the confession of the captain of the *Peking* to show that the *Yik-sang* had carried contraband. The prize party lost no time in going to the *Yik-sang*, and taxed the captain with his false assurance of the previous day. Captain Bradley did not deny that the contraband goods were transhipped from his ship, but he calmly said that he was no longer in any way responsible as they had been discharged from the ship. To emphasize this opinion he wrote the following note :

"On the evening of the 8th April two hundred and twenty cases of *bamboo-steel* were discharged into one of the Taku Tug and Lighter Co.'s lighters from ss. *Yik-sang* outside the Taku Bar. The next morning this lighter was searched by a search party from a Japanese cruiser, and these cases were found to contain cartridges instead of *bamboo-steel*.

This cargo being at the time of this discovery on board another vessel, not on board the *Yik-sang*, I decline all or any responsibility with regard to it.

All that I know is that 220 cases of merchandise were shipped on board the *Yik-sang* in Shang-hai; that they were said to contain *bamboo-steel*; that the shipping-order they were received upon stated the contents to be *bamboo-steel*; and that this shipping-order was franked and guaranteed as correct by the official stamps of the commissioner of customs.

Neither I nor any of my officers would have countenanced or been privy to the carriage of any contraband of war, and I am positively certain that the British firm we sail under would not have done so either.

ROBERT C. D. BRADLEY,  
Commander of ss. *Yik-sang*."

Then the prize officer asked the captain whether he had anything more to say. He answered in the negative. On this the prize officer said that in the manifest 224 boxes of *bamboo-steel* were entered, while in the super-cargo book there were entered 220 boxes of *bamboo-steel* and four boxes of *Chinese books*, and as only 220 boxes were discharged there must be four more of the *bamboo-steel* or the *Chinese books*. At last the officer accompanied by the captain went down to the hold to see the remaining four boxes. Opening one of the four boxes, they discovered altogether 10,000 packets of ammunition. The captain could give no further explanation, and the commander of the *Tsukuba* declared that the *Yik-sang* should be detained. Let us here quote the official report of the prize officer, Lieut. Arao, which was forwarded to the prize court to give a clear idea of the facts, especially as regards the manner of detention.

EXTRACT OF THE REPORT OF LIEUT. ARAO.

"On coming down to the bottom of the hold we found four boxes of so-called *Chinese books*. One of them was broken open and the contents could be seen through the aperture. It was said that that box was broken at Shang-hai when coming on board. We then opened the boxes and discovered that each contained five smaller

boxes and that each of the smaller boxes contained 500 packets of ammunition. It must be noticed that on each of these smaller boxes the contents were described as ammunition in plain words which could be seen through an aperture in the box. And strange to say these four boxes of so-called *Chinese books* were kept at the bottom of the hold, as if intentionally concealed in an obscure part of the ship. Considering these points we could not but suspect that the captain was well acquainted with the nature of the goods. Accordingly at half past 12 we declared that we should detain the *Yik-sang* on the ground that she had contraband goods under the name of *Chinese books*. We then proceeded, as the next legal step, to secure all the papers belonging to the vessel. But the captain said that these papers except the super-cargo book and the manifest were not in the ship, as all of them were delivered to the company at Taku. Then we began to have an account taken in writing of all the money and valuables on board. But as the captain assured us that all the money kept in the ship's chest belonged not to the ship but to private persons, we did not insist on taking an account of it and simply made an inventory of all the valuables on board. All these papers and other evidence were arranged in proper order, and when we had finished all this business we waited for further orders from our commander.

*Signed:* LIEUT. ARAO."

In this way the *Yik-sang* was detained, and it was decided that she should be sent to the prize court at Sasebo.

### III. *The release of the Peking.*

The lighter *Peking* was declared to be detained as stated above, and she was to be brought to Japan. But the ship was too small to cross the high seas to Japan. According to the Japanese prize law, when the commander finds that the detained vessel is unfit to proceed to the port where the prize court is or the port nearest the prize court, he may release the vessel after taking out the contraband goods, if the vessel is not an enemy's vessel; and in that case the commander should have a survey of it made by his own best qualified officers.

So the commander of the *Tsukuba* determined to adopt this plan, and appointed Lieut. Arao to survey the ship.

The following is the report of Lieut. Arao regarding the *Peking*:

I hereby declare that the *Peking* is too small for navigating a rough sea, and even if other ships were to protect her there is no possibility of her safely proceeding to the Japanese prize court.

*Signed: LIEUT. ARAO,  
Surveying officer.*

Then all the contraband goods were taken from the *Peking* to the *Tsukuba*, and she was released.

A note sent by the manager of the Taku Tug and Lighter Co. ran as follows:

I have to thank you for the kindness you have shown in handing me back the lighter *Peking*, the lighter being too small and unseaworthy to go to the port of destination.

*Signed: J. W. JAMESON,  
Manager of the T. T. & L. Co.*

## **Sect. XVIII. The Coaling and Watering of the Yik-sang at Port Arthur.**

### *I. The voyage to Port Arthur.*

As the *Yik-sang* was very short of coal and water, she was obliged to call at Port Arthur to supply these wants. The following is the record of the voyage by Lieut. Sanada:

April 9th, 1895.

1.30 p.m. I received the following instructions from Captain Kuro-oka: "You must bring the *Yik-sang* to the prize court at Sasebo. If you are sure that she is short of coal and water you must supply them at Port Arthur."



Under these instructions I went on board the *Yik-sang* and I received from Lieut. Arao the following things :

1. A sealed packet containing the manifest and super-cargo book.
2. An affidavit as to the above-mentioned ship's papers, written by Lieut. Arao at the time of capture.
3. The list of all the valuables in the *Yik-sang* at the time of capture.
4. Two books recording all the things in the *Yik-sang*, which books were discovered at the time of capture.

When we, twenty-one in number, boarded the ship, I first of all questioned the captain about its speed. The captain said "10 miles an hour." The next question was "Is the coal sufficient for the voyage to Sasebo?" He answered "No. This ship used to run between Shang-hai and Tien-tsin. On this occasion we had just arrived at Taku and had no time to coal. So I think the supply is insufficient."

Then I asked about fresh water. To this question he replied "We have only five days' supply." I thought that as the distance from Taku to Sasebo is 800 miles, and as the China sea is usually very windy, rough and foggy in April, it was not certain that we could reach our destination within five days. Accordingly I determined to call at Port Arthur and communicated my intention to the captain who agreed.

4 p.m. The captain asked me to let him land thirty Chinese passengers, and I allowed him to do so.

6 p.m. The agent of the company came to see the captain.

7 p.m. We left Taku.

The 10th of April.

At midday we arrived at Port Arthur and prepared to coal and water. But the captain refused to do so. Moreover his manner became very rude, whereas he had been exceedingly polite during the voyage from Taku to Port Arthur.

Such is Lieut. Sanada's report of the navigation of the *Yik-sang* to Port Arthur.

## II. *Three days in Port Arthur.*

When the *Yik-sang* arrived at Port Arthur and the Japanese officer prepared to coal, the captain said

that as the Japanese commander had required him to go to Port Arthur and that demand was acknowledged by the agent of the company, he had himself navigated the vessel to Port Arthur, but that as he had finished that duty, he had nothing further to do. He added that he was no longer the captain of the *Yik-sang*, but simply a passenger; that he would not give any assistance, and that not only he but also his crew would not work any longer. At the same time he wrote a letter to Admiral Inouye, who was at that time temporarily at Port Arthur, asking him to judge the case and release him. The admiral dictated to a staff officer the following letter in reply :

"I have received your letter. I think the prize court is the proper place where you can insist on your rights, and I have no intention of trespassing upon the rights of the court. Hereafter if you have anything to say, you must say it to the prize officer."

On the 11th, when the Japanese officer again endeavoured to coal and water, the captain would not consent to do so. As the Japanese authorities did not like to take vigorous steps if peaceable negotiations could be expected to attain the same end, they tried to explain to the captain the principle of prize law; and at 1 p.m. on the same day staff-commander Yoshimatsu, chief engineer Seki, and the prize officers on seeing the captain explained the reason for the detention. But the captain said that as he was not a lawyer he could not understand legal matters, and dictated the following requests :

"The *Yik-sang* has now arrived at Port Arthur, which is now part of the Japanese territory. So the present case must be judged here, and it is too much to demand that the *Yik-sang* should be brought to the Japanese mainland. Fortunately Admiral Inouye is now present in Port Arthur. So I hope that he will give a summary decision.

"Otherwise I hope that the Japanese admiral will allow me to go to Che-foo, where I will consult an English naval officer, under whose protection I am, regarding the present case, and if he is of opinion that I must go to Japan I shall come back here and be ready to go to Sasebo."

All these demands were quite unreasonable and rather ridiculous. He could not distinguish occupied land from real territory, and thought that Port Arthur had become the territory of Japan. The Japanese officers explained the difference between them, and said that the prize court could not be held at Port Arthur, according to the Japanese prize regulation. But he did not understand and blindly insisted that it was too much to order him to go to Japan.

On the morning of the 12th, as a last resort, Commander Yoshimatsu, chief engineer Seki, the prize officer and I went to the ship and again explained his duty of going to the prize court. To learn his intention I asked him several questions, but he said he would not answer any questions and wrote the following words :

"I do not intend to answer these questions—if these questions have to be answered they will be answered in the presence of a representative of Her Majesty Queen Victoria.

*Signed:* R. C. D. BRADLEY."

Thus we made sure that there was no more room for peaceful negotiation. His words were strangely contradictory, for while he wished a judgment to be given at Port Arthur he did not think fit to answer questions which the Japanese authorities at the port put to him.

Hereupon we decided on taking vigorous measures, and to man the ship with a Japanese crew and navigate her to Japan with them only. Coal and

water were supplied at once. A crew of 47 men was sent from the *Musashi* and the *Tsukuba*, and on the 13th the *Yik-sang* started from Port Arthur for Sasebo, escorted by the *Musashi*. Just before her departure the British cruiser *Porpoise* came into port and asked Admiral Inouye if he might see the captain of the *Yik-sang*. On seeing the captain, the English commander advised him to behave quietly and said that it was not in his interest to be indignant. After this advice the captain seemed to regret his former behaviour, but it was too late. On the whole the captain's manner was very prejudicial to his case. If he had behaved properly there might have been some chance of his release, because in the Japanese prize law it is laid down that when the commander is not able to send a crew to a vessel for the purpose of bringing her to the prize court, he may act as the state of things permits him ; and at the time of the detention of the *Yik-sang* the Japanese navy had the very important business on hand of sending an army to the province of Chihli to attack Peking the instant peace negotiations were broken off, and consequently it was very inconvenient to send a number of officers and a crew to the *Yik-sang*. In fact some of the Japanese authorities urged the release of the *Yik-sang* at Port Arthur. But as the captain was too refractory, even those who desired to be favourable to him were obliged to consent to vigorous steps. The following explanation of the three days' stay of the *Yik-sang* at Port Arthur was presented to the court :

"It was said by the captain of the *Yik-sang* that she was short of coal and water. So the prize officer called at Port Arthur. This is the reason why the *Yik-sang* did not go direct to the prize court. When the officer was ready to coal and water at Port Arthur the

captain refused to do so. We tried again and again to persuade him to enable us to supply these wants, but in vain. Thus two days were passed without any result. At last, on the third day, we coaled and watered without any help from the captain, and a Japanese crew of 47 men was taken on board. If the captain had not been refractory there would have been no such delay, but as matters stood a stay of three days was necessitated.

*Signed: S. TAKAHASHI.*

*April 13th, 1895.*  
PORT ARTHUR.

*Legal adviser to  
the admiral-in-chief  
at Port Arthur."*

### **Sect. XIX. The Navigation of the Yik-sang to Sasebo.**

On the morning of the 13th the Japanese officers and crew took possession of the *Yik-sang*.

About 5 p.m. coal, water and provisions were taken in, and at 6.40 p.m. she left Port Arthur. On board the *Yik-sang* there were 60 Chinese sailors and a great number of other people, therefore great precautions were taken against any unexpected accidents, and especially against the explosion of ammunition or the outbreak of fire. During the voyage no flag was hoisted, partly out of respect for the British flag and partly because the Japanese officers had no commission to act under the flag of another nation<sup>1</sup>.

On the 14th she passed the Shan-tung Promontory. On that day the captain presented the official log-book to the prize officer, saying that he had thought the book was not in the ship, but he had found it in a certain room. Lieut. Arao at once enclosed and sealed it in the presence of the captain.

On the 16th the captain offered the ship's log, which the prize officer also enclosed and sealed.

<sup>1</sup> The Japanese Prize Law, Art. 14.

At 4.14 p.m. on that day the *Yik-sang* arrived at Sasebo. During the voyage the captain refused to give any assistance, and when the ship entered the port of Sasebo and the prize officer wanted to have a man to assist him, as was very necessary, the captain obstinately refused to help.

On the 17th the officials at Sasebo came on board, and the ship was soon delivered over to them as is directed in the prize law.

### Sect. XX. The Opening of the Prize Court.

As soon as the telegram about the detention of the *Yik-sang* reached Sasebo, T. Hitomi, the president judge of the court, appointed S. Tagami, one of the judges, as the judge specially responsible for the case in accordance with Art. 11 of the Japanese prize court law. On the arrival of the *Yik-sang* Lieut. Arao, the chief officer of the ship which made the capture, brought the following documents to the court :

1. The report of the detention by Captain Kuro-oka.
2. The report of the detention by Lieut. Arao.
3. The report of the release of the *Peking*.
4. The explanation of the calling at Port Arthur.
5. The explanation of the three days' stay at Port Arthur.
6. The sealed packet containing the super-cargo book and the manifest.
7. The affidavit relating to the above papers.
8. The list of all the valuables in the ship at the time of capture.
9. Two books recording all the things in the *Yik-sang*, which books were found on the 9th of April on board the ship.

10. The official log-book, which was offered by the captain on the 14th, and an affidavit about it.

11. The ship's log, which was offered by the captain on the 16th, and the affidavit relating to it.

The other important ship's papers were sent to the court by the company at Shang-hai at about the time of the *Yik-sang's* arrival.

Let us here notice the document in which Lieut. Arao maintained the justice of the capture. It runs thus :

" 1. Bamboo-steel and Chinese books were entered in the super-cargo book, while the Chinese books were omitted in the manifest. The difference between these documents naturally caused suspicion.

2. The captain kept two copies of the manifest differing from each other ; on the 8th he showed me the one, after the examination of which I released the ship ; but on the 9th I found the other.

3. The term *bamboo-steel* is not English. The captain, who had the responsibility for any risk to the ship, must have exercised precautions in lading so many boxes of it.

4. One of the boxes of so-called *Chinese books* was broken at Shang-hai and the smaller boxes contained in it were easily visible through the aperture. Upon each of the smaller boxes the contents were described as ammunition, as could also be seen through the aperture in the larger box. So the captain cannot be excused as having been quite ignorant of the nature of the contents.

5. Why did the captain assure me on the day previous to the detention that *bamboo-steel* is nothing but unworked metal, and say that he would show the contents if we were suspicious about them ?

6. The captain told me on the day previous to the detention that the cargo was destined from Jardine, Matheson and Co. at Shang-hai to their agent at Tien-tsin. This was not the truth. If he was entirely ignorant, what need for this lie? And if the cargo was destined for Tien-tsin, why did he discharge the contraband goods alone at Taku?

7. In general, *Chinese books* are very light. So it was very easy to surmise that the boxes did not contain Chinese books, as they were very heavy.

8. Through the aperture made in the box it could easily be seen that the contents were not books.

9. On the boxes of so-called *Chinese books* no mark or number was put, and they were kept in the bottom of the hold. It is necessary on board merchant vessels to put on each package a mark and a number, and the number and mark must be entered in the manifest. Why did the captain omit this important step in the case of contraband goods only, and put them in the bottom of the hold?

10. Why did the captain change the name of *bamboo-steel* to *steel bars*, when he transhipped them to the *Peking*?

11. The captain did not deliver up the important ship's papers at once, but he handed them in on the 14th and the 16th.

By a simple deduction from these facts I cannot but insist that the captain was not ignorant of the nature of the cargo."

Such was the weighty representation of Lieut. Arao.

At 4.30 p.m. of the 17th, Lieut. Arao, the captain and the chief mate of the *Yik-sang*, and Anton, who came from Shang-hai to defend the interests of the owners of the ship, were summoned to the court. In



their presence all the sealed documents were opened and a list of them was made by Judge Tagami. At that time Lieut. Arao said under oath that the manifest which was presented to the court was different from that which he saw on the first day of visit. Captain Bradley and Anton asked to have the examination postponed for a few days to wait the arrival of R. Massujima the barrister who would come to defend their case, and this demand was allowed.

On the 20th and the 21st the Chinese who supervised the cargo were examined. On the 23rd, the captain and chief mate were subjected to the preparatory examination on the standing interrogatory.

On the 24th the second mate and Johnson who came from Shang-hai to defend the interest of the owners of the ship were examined. Johnson brought some correspondence between the company and R. Telge & Co., the owners of the contraband goods. In the documents which he had brought the following points were adduced :

1. Jardine, Matheson and Co. claimed of R. Telge & Co. that they should pay all the expenses, because, as R. Telge & Co. shipped the contraband goods under a false representation, they were responsible for the detention.

2. To this claim R. Telge & Co. replied that they shipped the contraband goods, but not under any false representation, and that they were not responsible for the payment of the expenses.

On the 25th the fact came out that the *Yik-sang* was formerly the *Pon-ben* of the Pon-ben Co. On the 26th it was discovered that the *Yik-sang's* engine did not correspond with the certificate of registry. She had a triple expansion engine, while on the paper it was stated to be a compound engine.

Such in brief was the examination of the *Yik-sang*. Eventually it was decided that all the contraband goods were a lawful prize, and that all the non-contraband goods on board, and the *Yik-sang*, should be released. The decision will be more fully given in the next section.

**Sect. XXI. The Decision of the Japanese Prize Court on the Yik-sang and her cargo.**

*I. The decision on non-contraband neutral goods on board the Yik-sang.*

On April 26th, 1894, the Japanese prize court gave the following decision regarding a part of the cargo of the *Yik-sang* :—

We hereby give the following decision on the under-mentioned articles, after examination of the document embodying the procurator's view regarding the prize affair of the *Yik-sang*, a ship belonging to the Indo-Chinese Steamship Navigation Co., which had been detained by H.I.J.M.S. *Tsukuba* at the Taku Bar on April 9th of the 28th year of Meiji :

The under-mentioned articles were shipped on board the *Yik-sang* at Shang-hai on April 4th of the 28th year of Meiji, together with contraband goods. The nature of these goods does not make them contraband of war, and the consignors are neutrals. Although the consignees are not entered in the ship's papers there is no evidence to show that these goods were destined for a hostile army or fleet. Accordingly these under-mentioned goods, although some of them are occasional contraband, are not liable to confiscation. And we hereby adjudge these goods to be released, while we

deem the detention of the *Yik-sang* and her cargo to be quite legal.

April 26th of the 28th year of Meiji.

TS. HITOMI,  
*chief judge of the prize court.*  
N. SENJU,  
*assistant judge.*  
S. HATAKEYAMA,  
*assistant judge.*  
S. TAGAMI,  
*assistant judge.*  
I. SHIMIZU,  
*assistant judge.*

<i>Name of Goods.</i>	<i>Consignor.</i>	<i>No. of Cases, Bales, etc.</i>
Rice and Wheat	Jardine, Matheson & Co.	2,394
Cotton	do.	61
Wine in Case	Hirsbrunner & Co.	1
Dye stuff	Wm. Meyerink.	30
do.	do.	200
Iron windlass	Jardine, Matheson & Co.	1
Paints (foreign)	do.	2
India-rubber pipe	do.	1
Cotton cloth	do.	1
Steel file	do.	1
Antimony	do.	1
Polishing cloth	do.	1
Paper fans	do.	5
Silk fans	do.	1
Copper wares	do.	1
Bamboo wares	do.	7
Soap	do.	2
Tin plate	do.	10
Mosquito net	do.	1
Nails	do.	10
Wax vestas	do.	4
Tin box	do.	1
German knitting wool	do.	2

<i>Name of Goods.</i>	<i>Consignor.</i>	<i>No. of Cases, Bales, etc.</i>
Provisions	Jardine, Matheson & Co.	4
Bamboo bark	Almeida	6
Cocoa bark	Jardine, Matheson & Co.	5
Woollen cord	do.	1
Cotton thread	do.	1
Bamboo wares	do.	1
Cakes	do.	1
Drugs	do.	4
Fruit peel	do.	2
Drugs	do.	5
Casein legumin	do.	1
Brass wire	do.	12
Lacquer	do.	20
Tin plate	do.	30
Flour	Eadon	50
Potato flour	do.	12
Turmeric	do.	30

II. *The public announcement concerning the contraband goods of the Yik-sang and their condemnation.*

On April 27th, 1898, the following announcement was published in the official gazette of Japan.

(1) *The announcement regarding the munition of war.*

Munition of war shipped by R. Telge & Co.....220 bales.

The above-mentioned goods were detained at the Taku Bar on April 9th of the 28th year of Meiji from the *Peking*.

Anyone who deems his interests affected by these goods being adjudged a prize may send in a written petition within 30 days from the day after this announcement appears.

(2) *The announcement regarding cases of ammunition for magazine rifles.*

The ammunition shipped by R. Telge & Co.....4 boxes<sup>1</sup>.

The above-mentioned goods, which were detained at the Taku Bar together with the *Yik-sang*, are to be adjudged a prize. Anyone who deems his interests affected by this adjudication may send in a written petition within 30 days from the day after this announcement appears.

The prize court.

*Sasebo, Japan.*

April 27th of the 28th year of Meiji.

No petitioner appeared within the prescribed period, and after some necessary steps had been taken the above-mentioned contraband goods were condemned as prize.

III. *The decision about the Yik-sang and a part of her cargo.*

"We hereby give the following decision regarding the *Yik-sang*, the ship of the Indo-Chinese Steamship Navigation Co., and the under-mentioned articles, which were detained by the *Tsukuba*, H.I.J.M.S., at the Taku Bar on April 9th of the 28th year of Meiji."

The written statement forwarded by the commander of the *Tsukuba* is as follows:—

"At 11.30 a.m. on April 8th of the 28th year of Meiji, when the *Tsukuba*, H.I.J.M.S., was at anchor at the Taku Bar, the British vessel *Yik-sang*, which had started from Shang-hai and had called at Che-foo, arrived at a spot nearly 8 miles off the coast of Taku. The commander instantly sent Lieut. Arao and Sub-Lieut. Takagi to visit the vessel. Captain Bradley of

<sup>1</sup> See appendix v., art. 12.

the *Yik-sang* assured them that she had no contraband on board and showed the ship's papers. So the prize party returned and did not make further inquiries. But on the 9th a great quantity of ammunition was found on board the *Peking*, a lighter of the Taku Tug and Lighter Co., and it was discovered that these contraband articles were transhipped from the *Yik-sang*. The commander of the *Tsukuba* lost no time in sending Lieut. Arao and Sub-Lieut. Takagi to the *Yik-sang* for a search. On seeing the captain of the *Yik-sang* the prize officers asked him whether the contraband goods on board the *Peking* had been discharged from his ship. To this question the captain replied that the steel bars on the *Peking* were actually transhipped from his vessel. Then the prize officer asked him to show the papers mentioning the consignors and consignees, and the invoices concerning the steel bars. Then the captain showed the manifest and the super-cargo book, and said that these contraband goods were shipped by R. Telge & Co. at Shang-hai, and that there were still four boxes of the Chinese books in his vessel shipped by the same consignor. Then the prize officers examined the papers and discovered that in the manifest 224 boxes of bamboo-steel were entered, while in the super-cargo book they appeared as 220 of bamboo-steel and 4 of Chinese books. The prize officer desired to see the boxes of Chinese books which still remained in the ship, and on opening one of them discovered that each of the boxes contained five smaller boxes marked as containing ammunition for magazine rifles, made at the Kiang-nan arsenal."

Hereupon the commander of the *Tsukuba* detained the *Yik-sang* by reason that she had carried contraband goods under the false description of "Chinese books."

Taking into consideration the deductions from this document, from the statements made by both parties in the presence of the judge commissioned to take charge of the present case, and from all other papers concerning the case, we adjudge that :—

The *Yik-sang* is a neutral ship owned by the Indo-Chinese Steamship Navigation Co., London, England, and the contraband goods, namely the cases of ammunition shipped by the German firm R. Telge & Co., destined to Tien-tsin from Shang-hai, were only a small part of her cargo both in quantity and number ; that as to the false representation of the contraband goods under the description "Chinese books," there is no evidence for a verdict of falsification or conniving at another's falsification on the part of the owners of the ship, their agent or the captain ; that the under-mentioned goods were not contraband in nature, and their owners are not the same as those of the contraband goods, although they were shipped by hostile persons ; and that although some of the under-mentioned goods are occasional contraband, still there is no evidence that those goods were destined for a hostile army or navy.

It is a principle of international law that even though some contraband goods be found on board a neutral ship destined to an enemy's ports, if the contraband be less in number and quantity than the other cargo only the contraband goods are to be condemned, and the ship itself and non-contraband goods must be released, unless there is some falsification on the part of the owner or the captain of the ship, or unless the owner of the contraband is also the owner of the ship. It is also a principle of international law that only contraband goods and non-contraband which are owned

by the same owner as the contraband are liable to confiscation.

For these reasons, we hereby adjudge that the *Yik-sang* and the undermentioned goods are not prizes at all, notwithstanding that their detention was carried out quite lawfully.

May 1st of the 28th year of Meiji.

TS. HITOMI,  
*chief judge of the prize court.*

N. SENJU,  
*assistant judge.*

S. HATAKEYAMA,  
*assistant judge.*

S. TAGAMI,  
*assistant judge.*

I. SHIMIZU,  
*assistant judge.*

<i>Name of Goods.</i>	<i>Consignor.</i>	<i>No. of Cases, Bales, etc.</i>
Iron rods	Ching-Chung (Chinese)	608
Steel rods	do.	3
Paraffin oil	Woo-Chung-Ching (do.)	1,000
Steel ropes	Ching-Chung (do.)	7
Paint (foreign)	do.	12
Tin plates	do.	1
Canvas	do.	1
India-rubber	do.	1
Copper wire rope	do.	1
Provisions	Hong-bar (do.)	12
Sundries	Ching-Chung	1

The *Yik-sang* therefore and her cargo, except the munitions of war, were released by this decision. I have many points to discuss concerning this decision in the next section.



**Sect. XXII. Observations on the Yik-sang Case.**

I. *If contraband of war has been discharged from a vessel, has she no further responsibility with respect to that contraband?*

The *Yik-sang* carried contraband of war which was destined for Tien-tsin from Shang-hai. Before the contraband goods reached their destination the greater part of them was discharged into another neutral ship, the *Peking*, about 7 miles outside the Taku Bar. The captain of the *Yik-sang* maintained that he had no further responsibility after this transhipment. To quote his own words: "On the evening of the 8th April, two hundred and twenty cases of *bamboo-steel* were discharged into one of the Taku Tug and Lighter Co.'s lighters from S.S. *Yik-sang* outside the Taku Bar. The next morning this lighter was searched by a search party from a Japanese cruiser, and these cases were found to contain cartridges instead of bamboo steel. This cargo being at the time of the discovery on board another vessel and not on board the *Yik-sang* I decline all or any responsibility with regard to it."

Is this position tenable from a legal point of view? In my opinion the *Yik-sang* must be held responsible not only for the contraband which remained on board, but also for that which had been discharged. We must note that Tien-tsin was the head-quarters of Li Hung-Chang, where the strongest Chinese army was assembled. To this place the *Yik-sang* and the contraband goods were bound, and the greater part of the goods was transhipped to a neutral boat outside the Taku Bar. Of course as Taku was not a neutral port, we cannot directly adopt the doctrine of continuous voyages. But if we admit that the mere touching at a

neutral port or even a transshipment in such a port is not to be considered as breaking the voyage, we must certainly hold that the *Yik-sang's* voyage was not broken by the transfer of the contraband to the *Peking*, seeing that it took place at a port which was not even neutral but hostile—in other words the transshipment of contraband goods at a hostile port before reaching the ulterior hostile destination could not break the voyage. Therefore the *Yik-sang* must incur the entire responsibility in respect of all the contraband goods, both that part which remained and that which had been discharged.

The fact that the *Peking*, into which she discharged her goods, was a neutral vessel seems to bring the case under the doctrine of continuous voyages. But the *Peking* was simply a lighter, and consequently her deck could not be deemed a floating part of neutral territory, as a man-of-war is considered to be by international fiction. Thus transshipment to such a vessel has no bearing on the doctrine, and whether the *Peking* was a neutral or not makes no difference to the liability of the *Yik-sang* to legal penalties for having carried 224 boxes of munitions of war.

Holding this view let us examine the decision of the Japanese prize court. The decision quoted the statement of the commander of the *Tsukuba*, which runs thus :

“The prize officer desired to see the four boxes of Chinese books which still remained in the ship, and on opening one of them discovered five smaller boxes, upon each of which was inscribed—500 *packets of ammunition for magazine rifles, made at the Kiang-nan arsenal*. Hereupon the commander of the *Tsukuba* detained the *Yik-sang* on the ground that under a

false description of Chinese books she had carried munitions of war."

The boxes of Chinese books were four in number. The commander of the *Tsukuba* detained the *Yik-sang* on account of these four boxes. The judges of the court took the same view as the commander, and in giving judgment did not take into consideration the contraband goods transhipped to the *Peking*, but held that the contraband was very little in proportion to the other cargo. This view I cannot regard as flawless.

The principles laid down in the decision are very plain and straightforward. They were the principles fully acknowledged in international law, and there is no question about them. But the doubt is whether these principles can be applied to the *Yik-sang*. However, I will leave readers to draw their own conclusions from the obvious facts of the case and will pass on to discuss the second question.

II. *Can ignorance on the part of the captain exempt from liability to capture?*

Professor Holland in his *Manual of Naval Prize Law* enumerated several excuses made by captains who were carrying contraband, and he laid down that such excuses are not to be paid attention to. He says: "It will be no excuse for carrying contraband that the *master is or pretends to be ignorant of the nature of the goods on board his vessel*<sup>1</sup>." Thus even in the case where a captain is in entire ignorance, that ignorance cannot serve as an excuse. Moreover in the case of the *Yik-sang* we have ample evidence to show that the captain could not prove his ignorance.

In considering this point the state of things in

<sup>1</sup> Holland's *Naval Prize Law*, Art. 74, p. 22.

Shang-hai must be noticed. The *Japan Mail* reports : "Owing to representations made by western powers at the commencement of war, Japan agreed to deem Shang-hai a neutral port, and has carefully adhered to her agreement. But it does not appear that a similar engagement was required of China. At all events she has acted as though no such obligation existed; taking liberal advantage of the place's newly acquired status to convert it into a basis for obtaining and manufacturing war material and enlisting foreigners for military service. The rifle cartridges contained in Messrs Telge and Company's boxes of *Chinese books* were made at the Kiang-nan arsenal, and inasmuch as that institution has been working day and night since the commencement of the war, it is not extravagant to assume that the packages shipped in the *Yik-sang* were not by any means the first war material smuggled from Shang-hai to Tien-tsin by a similar process."

The Japanese authorities received several similar pieces of intelligence from Shang-hai during the war. Taking this information into consideration we could readily assume that the owner of the *Yik-sang* came to an understanding with the shipper as regards carrying munitions of war, and that the captain was very well acquainted with the nature of the cargo.

There is however no necessity to make such an assumption, for we can easily prove that the captain could hardly pretend to ignorance, from the following facts :

(1) The words which clearly told the nature of the contraband, could be seen through the aperture made in one of the boxes.

(2) Why did the captain give the assurance on

the day previous to the detention that *bamboo-steel* (a meaningless term) is nothing but un-worked metal, and say that he would show the contents of the boxes if the prize officers were suspicious? If he was totally ignorant of the nature of the cargo how could he make such an assertion?

(3) On the first day of the visit, that is on the 8th of April, the captain of the *Yik-sang* said that the cargo was destined for Jardine, Matheson and Co. at Tien-tsin from the company at Shang-hai. This was not so. If he was entirely ignorant, what need for this untruth? And if the consignee was in Tien-tsin, why did he before reaching his destination discharge (at Taku) the contraband goods and those only?

(4) The term *bamboo-steel* is not English. The captain who was responsible for any risk to the ship must have been aware of the necessity for great care in lading so many boxes of it, and must have exercised such care.

(5) The declaration of R. Telge and Co. that they had not shipped contraband under a false declaration shows that they must have disclosed the true nature of this contraband. Then also Jardine, Matheson and Co. must have known the nature of the cargo.

Thus there was ample ground for at least doubting that the owner and the captain of the *Yik-sang* were ignorant of the nature of the cargo. Still the decision held that "as to the false representation of the contraband goods under the description of *Chinese books* there was no evidence for a verdict of forgery or to implicate in the forgery either the owners of the ship, their agent or the captain." I cannot but say that the correctness of this decision is extremely doubtful.

III. *The situation of a prize court.*

As to the situation of a prize court, the question may be treated under the following heads:

- (1) A belligerent can establish a prize court in his own territory.
- (2) A belligerent can hold a prize court in his ally's territory.
- (3) A belligerent cannot establish a prize court in neutral territory.
- (4) Can a prize court be established in an occupied territory?
- (5) Does international law sanction the establishment of prize courts by commanders of belligerent cruisers on board their ships which are in either of the following situations?

A.—In a belligerent's own or its ally's territorial waters, or in the waters of a territory occupied by the belligerent.

B.—On the high seas or in neutral waters.

The opinions of authorities on international law are in concert as regards (1) (2) and (3). But many writers have not touched upon (4) and (5). For instance, Wheaton says:

"The validity of maritime captures must be determined in a court of the captor's government, sitting either in his own country or in that of its ally<sup>1</sup>."

Like this, the writers with a few exceptions say nothing about (4) and (5), while they maintain the possibility of (1) and (2) and declare for the negative in (3).

Among those who have insisted that prize courts

<sup>1</sup> Wheaton, Part IV. ch. II. § 13. See also Phillimore, Vol. III. § 365, and Kent's *Commentary on American Law*, Vol. VI. p. 103.

can be established in occupied territories are Halleck and T. J. Lawrence.

Halleck says :

"It has already been shown that neither the executive nor military authorities of the United States have power to establish prize courts in conquered territory to administer the law of nations. But it is different with Great Britain ; for as the limits of the empire are extended *ipso facto* by the conquest, and as the conquered territory becomes instantly the dominion of the crown, the king who issues prize commissions of his own authority may erect courts there for the exercise of such jurisdiction. In speaking of the island of Heligoland, which had been taken possession of by the British forces but had not been confirmed to Great Britain by a treaty of peace, Sir William Scott remarked : "It might have erected a court there for the exercise of admiralty jurisdiction ; and if it did not, I presume it refrained from so doing because it was not thought that the public convenience required it. The enemy certainly had no right to say that a court of that kind should not be there erected<sup>1</sup>."

Dr Lawrence says :

"Prize courts are municipal tribunals set up by belligerent states in their own territory, in territory under their military occupation, or in territory belonging to an ally in the war<sup>2</sup>."

In justifying the position maintained by the above authorities, we must refer to the question of how far an invader can claim sovereignty over a territory which he is occupying. If we hold that the invader is not entitled to exercise any sovereignty at all over the

<sup>1</sup> Halleck (edited by Baker, 1878), Vol. II. ch. XXXII. § 424.

<sup>2</sup> Lawrence's *Principles of International Law*, § 212, p. 399.

occupied territory, then the above writers' view will not be defensible. But according to the present international law, the invader is entitled to exercise the rights of sovereignty although he does not possess the sovereignty itself. It is true that the doctrine of temporary and partial substitution of sovereignty is dying away, and that the rights of occupation may be placed upon the broad foundation of simple military necessity, as Hall said<sup>1</sup>. At the same time it is also true that as far as military necessity requires, the invader can exercise the rights of sovereignty in an occupied territory, and as one of the modes of that exercise he can establish a prize court there.

A precedent is sometimes quoted as being opposed to this view.

In the case of *Jecker v. Montgomery* the supreme court decided that condemnations by prize courts in California, of vessels and cargoes seized and brought in there during the war between the United States and Mexico, were not sustainable under the constitution of the United States, though these tribunals were established with the sanction of the executive department of the government.

"All captures," the court said, "*jure belli* are for the benefit of the sovereign under whose authority they are made; and the validity of the seizure and the question of prize or no prize can be determined in his own courts only, upon which he has conferred jurisdiction to try the question. And under the constitution of the United States the judicial power of the general government is vested in one supreme court, and in such inferior courts as congress shall from time to time ordain and establish. Every court

<sup>1</sup> See Hall, p. 487.



of the United States, therefore, must derive its jurisdiction and judicial authority from the constitution or the law of the United States. And neither the president nor any military officer can establish a court in a conquered country, and authorize it to decide upon the rights of the United States or of individuals in prize cases, nor to administer the law of nations.

“The courts established and sanctioned in Mexico, during the war, by the commanders of the American forces were nothing more than the agents of the military power, to assist in preserving order in the conquered territory, and to protect the inhabitants in their persons and property while it was occupied by the American arms. They were subject to the military power, and their decisions were under its control whenever the commanding officer thought proper to interfere. They were not courts of the United States, and had no right to adjudicate upon a question of prize or no prize; and the sentence of condemnation in the court of Monterey is a nullity, and can have no effect upon the right of any party<sup>1</sup>.” Thus we see that what was decided was not that the United States were incompetent by the law of nations to establish a prize court at Monterey, but that the executive department of the United States government had not power to do so by their constitution.

As to the fifth problem, we will first examine the following case :

(a) When a man-of-war is lying in the territorial waters of a belligerent or its ally or in those of an occupied territory, can a prize court be held on board the vessel by that belligerent, provided the proper

<sup>1</sup> Howard's Reports, Vol. XIII. p. 515 : *Jecker v. Montgomery*.

processes of procedure which are necessary in an ordinary prize court are followed?

No writer seems to have discussed this question. But it is clear that if we admit the prevailing principle concerning the establishment of a prize court in a belligerent's own dominions or its ally's or in occupied territory, we may infer that a court can be held on the deck of a man-of-war—a floating portion of a territorial sovereignty—lying in the above-mentioned waters, provided the proper processes of procedure are followed.

Now let us proceed to treat the following case :

(b) When a man-of-war is on the high seas or in neutral waters can the commander of the vessel open a prize court on its deck?

We must deny that this is possible either on the high seas or in neutral waters. But as regards the high seas we find a singular precedent during the American civil war<sup>1</sup>. Captain Semmes of the confederate steamer *Sumpter* and later commander of the *Alabama* would seem to have turned his cabin into a prize court on the occasion of every capture made by him. Snow says : " During his cruises in the *Sumpter* and the *Alabama* Captain Semmes had occasion to adjudicate in more than seventy cases of prize ; in fifty-nine of these cases ship and cargo were condemned as enemy's property and burned ; in nine cases the ships were released on ransom bonds, the cargo being plainly neutral. But in a large number of the cases of those condemned and burned there were claims for the cargoes as neutral property. Captain Semmes seems to have condemned the cargo unless there was positive proof of its neutrality. This practice was carried on

<sup>1</sup> Snow's *Cases on International Law*, pp. 519, 520, quoting Captain Semmes's *Cruise of the Alabama*, Vol. 1. p. 346.

by him and others for four years, and was acquiesced in by neutral nations, who permitted their ships to be searched and their property adjudicated upon by these commanders. They received them into their ports and supplied them with provisions and coal. Who shall say therefore that hereafter a prize court may not be established on the deck of every belligerent man-of-war, the commander constituting such court?"

This view by Snow is hardly admissible. In the above cases no proper steps of procedure for the advantage of the interested party were possible to be followed. Neither was opportunity given nor any notification published. The establishment of a prize court under such conditions on the deck of a man-of-war on the high seas would certainly not be in accordance with international law.

As to the establishment of a prize court on board a ship in neutral waters, there is no necessity for discussion, because (1) the establishment of a court in neutral water is absolutely illegal, as on neutral land, (2) a belligerent ship is not usually allowed to remain more than 24 hours in the same neutral waters, and there is not time for the proper conduct of a case.

Now as regards the *Yik-sang*, the captain insisted that the case should be judged in Port Arthur.

It is clear that as far as international law is concerned we could have established a prize court there. But we declined to open one, since in close analogy to the American decision quoted on pages 103, 104, I was of opinion that only the Emperor of Japan and not the admiral could do so. The Japanese law never gives the commanders of men-of-war the power of deciding prize cases. Moreover in the Japanese prize court law, the situation of a prize court and the opening

and closing of the court must be determined by an express imperial ordinance<sup>1</sup>. So in the case of the *Yik-sang* it is clear that the admiral at Port Arthur could not have opened a prize court there without a special ordinance from the supreme power in the state.

<sup>1</sup> See Appendix vi.

## CHAPTER V.

### THE CHAO-CHOW FOO AFFAIR.

#### **Sect. XXIII. The search of the Chao-chow Foo.**

ON the 27th of July, 1894, a German steamer, the *Chao-chow Foo*, was twice visited by Japanese men-of-war, the *Akagi* and the *Takachi-ho*. The spot where the *Akagi* searched the steamer was within the territorial waters of Korea. Soon after these events the German consul at Chemulpo complained on the following grounds: (1) war had not been declared; (2) the spot was in neutral territory; and (3) it was an exorbitant demand to ask that a ship should be visited twice in one day.

To make the matter clear let us quote the report of the commanders of the men-of-war engaged in the visit.

#### THE REPORT OF THE COMMANDER OF THE *Akagi*.

"On the morning of the 27th we were proceeding to Chemulpo harbour. At 11.10 we found a steamer near Shun-tube Island. Drawing close to the ship, we discovered that she was a German steamer with many Chinese on board. The visit brought out that the name of the ship was *Chao-chow Foo* and that the Chinese on board were not soldiers. Consequently we released her after 10 minutes' delay.

*Signed: H. SAKAMOTO,  
commander of the Akagi."*

THE REPORT OF THE COMMANDER OF THE *Takachi-ho*.

"About mid-day on the 27th of July, when we were cruising off Phung-do Island, we sighted a steamer. We immediately turned to pursue her. She put on full speed, as if she was trying to escape. The faster she steamed the quicker we followed, and after three hours' chase we succeeded in coming close to her. At 3.40 p.m. near Sho-pai-oul Island we fired three blank shots in order to stop her, but she paid no heed. Then we tried two more blank shots, on which she was obliged to hoist the German flag and to heave to. This disregard for our orders and her general manner naturally aroused our suspicion, and consequently I ordered a prize crew to search her. But as no evidence was forthcoming from the visit, we did not venture to search and lost no time in releasing her. The rough description of the steamer was as follows:

Name	<i>Chao-chow.</i>
Nationality.	German.
Owner	Meyer & Co.
Captain	Meyer.
Destination	Che-foo.
Cargo	Oil.
Passengers	Chinese only.

*Signed:* S. NOMURA,  
*commander of the Takachi-ho."*

**Sect. XXIV. The protest of the German Consul and the Japanese answer.**

The visits made to the *Chao-chow Foo* greatly disturbed the German consuls at Chemulpo and Shang-hai, as well as the Germans resident in Korea and China. At length the German consul at Chemulpo sent a protest to the Korean foreign minister, instead of to the Japanese minister at Seoul. The general outline of the protest was as follows:

"On the 27th of July our German steamer the *Chao-chow Foo* was visited by Japanese men-of-war twice in one day. When she was visited for the first time her captain asked the Japanese officers

by what right they ventured to search the ship. To this question the officers answered that, as it was two days after the outbreak of war, they had as belligerents the right of visit. But we could not admit this explanation. Moreover, the scene of the first visit was N. Lat.  $37^{\circ} 4'$  and W. Long.  $126^{\circ} 8'$ , and so, no doubt, was within Korean territorial waters. According to the law of nations belligerents cannot visit, search or detain any ship within neutral territories. Consequently the action of the Japanese men-of-war was nothing but a trespass against Korean sovereignty. Hereupon we demand that the Korean government should not overlook such an illegal action as the enforcement by Japan of a belligerent right in Korean waters."

The Korean minister sent this protest to the Japanese minister at Seoul and asked for an explanation regarding the *Chao-chow Foo* affair. The Japanese minister also transmitted this note to the Japanese squadron in the sea of Korea.

Admiral Ito's answer was very clear. He said :

"The reasons for the visits to the *Chao-chow Foo* were three-fold :

(1) At that time it was known to the Japanese authorities that steamers under the flags of neutrals were engaging in the transport of Chinese soldiers and munitions, just as the *Kow-shing* did. Consequently our ships were anxiously looking out for any such transport. At such a time the *Chao-chow Foo* with many Chinese on board came in sight of our men-of-war and was visited by them. There is no necessity to discuss whether Japan had a right of visit at that time, as it was two days after the commencement of war.

(2) By the law of nations any ship which intends to escape visit is liable to search. Now the *Chao-chow Foo* steamed fast at the sight of the *Takachi-ho*, which ship was obliged to pursue her for three hours before coming to close quarters. Moreover she did not stop after three blank shots, and two more were required to make her heave to. These facts caused the second visit although it happened to be on the same day as the first.

(3) We do not deny that the spot was within the territorial waters of Korea. But in that country's territory the preparations for war were made, and even the battle itself was fought without any objection being raised. We do not therefore think it at all strange

to maintain that in such a territory we are entitled to visit, search and capture. The laws of neutrality do not apply in this case."

The answer was very lucid, but in fully describing the Japanese position some supplement will be necessary. Let us add some sound grounds for the admiral's opinion. The basis of the German consul's protest was that the spot was in neutral territory. This objection utterly fails, for the Korean waters were not neutral. In the treaty of alliance between Japan and Korea, we find the following words :

"In view of the fact that on the 25th of July, 1894, the Korean government entrusted His Majesty's envoy extraordinary and minister plenipotentiary at Seoul, Korea, with the expulsion, on their behalf, of Chinese soldiers from Korean territory, the governments of Japan and Korea have been placed in a situation to give mutual assistance both offensive and defensive. Consequently the undersigned plenipotentiaries, duly authorized by their respective governments, have, with a view of defining the fact and of securing in the premises concerted action on the part of the two countries, agreed to the following articles" (and so on).

As this treaty shows, the two countries were allied from the beginning of the war. Consequently Japan was entitled to send a great number of soldiers to march through Korean territories and established many naval stations in the several ports of Korea, even before the battle of Phung-do. For this reason it is clear that Korea was not neutral, but the ally of Japan, although the treaty was ratified at a later time in order to make the compact more binding. If Korea be not neutral, then on what other ground could the German consul complain about the visits to the *Chao-chow Foo*?



## CHAPTER VI.

### THE KWANG-CHI AFFAIR.

**Sect. XXV. The detention of the Kwang-chi and her release.**

SOON after the surrender of the Chinese squadron, the eminent Chinese Admiral Ting committed suicide. All the Japanese naval officers deeply sympathized with his situation, and Admiral Ito showed great generosity and chivalry in his treatment of the body of his late foe, and he willingly concluded the following agreement :

The coffins of Admiral Ting and those of the officers next in rank shall be sent out of the harbour at any time between noon of February 16th and noon of February 23rd, the *Kwang-chi* acting as transport.

The *Kwang-chi* which, out of respect for the spirit of the late Admiral Ting who did his duty towards his country, Vice-Admiral Ito has given back to the Chinese, shall be placed at the disposal of Nin Chang-ping, now acting as agent plenipotentiary of the Chinese army and navy in Wei-hai-wei.

According to this agreement the *Kwang-chi* was allowed to proceed to Che-foo, having on board the bodies of the admiral and the other officers.

It was on the 23rd of March, just one month after the starting of the *Kwang-chi*, that she again presented herself 10 miles off Wei-hai-wei, hoisting the Chinese

colours. At first her name could not be made out with certainty, and we were not a little struck with the strange boldness of the ship in slowly passing the strong naval station which now belonged to her enemy. Soon a Japanese man-of-war, the *Ten-ru*, ran at her, and ordered her to come into Wei-hai-wei. At 3 p.m. she entered the harbour, and it was soon ascertained that the captain of the ship was Ching, who had acted as messenger in the surrender of the Chinese squadron. His statement regarding the *Kwang-chi* would be curious if China were not concerned. He said: "The coffins of Admiral Ting and other officers were carried to Che-foo nearly a month ago, and were there landed. There we waited the arrival of the late admiral's son, who came on the 4th inst. Many days elapsed in decorating the coffins, and at last it was decided that they should be sent to the respective native provinces of the deceased. Consequently the ship was again ordered to carry the bodies to Shanghai. The complement of this ship is 9 officers, 56 sailors and 18 stokers. Besides these there are 96 sailors and 86 civil officers on their way home in this ship."

Then the commander of the *Ten-ru* proceeded to explain the details of the convention of Wei-hai-wei, and said that the *Kwang-chi* was allowed by the convention to carry the coffins to some port of China where they must be landed; that after the landing of the coffins the ship could have no exemption from detention, and that it was too hazardous a thing to ship the coffins a second time nearly a month afterwards, and to pass Wei-hai-wei. To this the Chinese captain answered that he thought the Japanese navy was very generous in the way it treated the memory

of Admiral Ting, and that he threw himself on the mercy of the Japanese commander. But the Japanese commander was not at fault in judging the matter. He thought that the *Kwang-chi* was an enemy's vessel on which many Chinese were embarked, and consequently it must be detained according to the Japanese prize law, which the commander had no power to disregard. Thus he declared that she was a lawful prize, and ordered her to hoist the Japanese flag.

This was a very lamentable state of things, and if the Japanese commander were to take the ship to Japan it would grieve Admiral Ito, from the affection which he bore for the memory of Admiral Ting. So Admiral Inouye, the commander-in-chief at that time, ordered that the ship should be allowed to go once more and to complete the voyage to Shang-hai, out of respect for the memory of Admiral Ting; and on the evening of the 24th she sailed for Shang-hai.

Such was the curious affair of the detention of the enemy's vessel the *Kwang-chi*.

## CHAPTER VII.

### THE TOO-NANG AFFAIR.

#### **Sect. XXVI. The details of the affair.**

EARLY on the morning of November 28th the *Too-nang*, a Chinese vessel belonging to the Chau-Shang Kiuk, came off Port Arthur for the purpose of receiving Chinese wounded. She hoisted a Chinese, a red cross and a white flag, and had on board many neutrals who presented themselves as being members of the Tien-tsin private Red Cross Society. Directly she could be seen by the officers of the Japanese cruiser *Hi-yei*, Commander T. Sakamoto was sent to make enquiries into the nature of the ship. The following is the report of Captain Sakurai the commander of the *Hi-yei*:

"7 A.M. We were preparing to join the main squadron at Talien Bay. A warning arrived from the officer on watch informing me that a vessel flying a Chinese flag was coming in sight. By and by we saw clearly a Red Cross and white square flags on her foremast. She signalled that she wished to communicate with us, and we answered by the signal to heave to. Accordingly the *Ōmi*, which was in a nearer position to her than we were, sent a prize party to visit her. After that visit the captain of the *Too-nang*, the honorary secretary of the Tien-tsin Red Cross Society and several European doctors went to the *Ōmi*, and Commander Sakamoto also went on board to make quite sure of the object of the *Too-nang's* coming to

Port Arthur. The Europeans said that as all members of the society were very desirous that the Chinese wounded should be handed over to them, they came to ask the Japanese commander-in-chief for permission. Commander Sakamoto then ordered them to come along with the *Hi-yei* to Talien Bay, pending further instructions from Admiral Ito. They agreed to that order, but when the *Hi-yei* began to get up steam the *Too-nang* signalled that her anchor gear was broken and she could not follow us. Next they signalled 'If you allow us we will go to your ship or along-side of your ship,' and soon afterwards the American vice-consul Mr C. D. Tenny, the honorary secretary of the society, came on board our ship the *Hi-yei*. He handed me certificates from neutral consuls and Li Hung-Chang's declaration concerning the *Too-nang* and all the Europeans on board, and asked us to forward them to the Japanese commander.

Hereupon we left the *Too-nang* to the care of the *Ōmi*, and soon after came to Talien.

Signed: K. SAKURAI,  
commander of the *Hi-yei*.

Nov. 28th, 1894."

Here let us give a list of the Europeans.

Those who brought the certificates from the English consul at Tien-tsin were:

Dr G. D. Smith.

Heustin, 1st class surgeon.

R. L. Thomson.

Dr E. M. Young.

Captain Cavendish, military attaché of the English legation.

Captain Bower, member of the staff of the English army in India.

Surgeon Major James, 2nd class surgeon.

A certificate from the American consul was brought by:—

C. D. Tenny.

A certificate from the Danish consul was held by:—

F. Lydum.

The gist of Li-Hung-Chang's declaration was as follows :

"Mr Tenny, the American vice-consul, Drs Heustin, Smith, Thomson, Young etc. intend founding a Red Cross Society for the treatment of sick and wounded. In accordance with the public law of western nations, that those who wear badges on their arms should be deemed neutral, the above-mentioned men wish to go to Port Arthur on board the *Too-nang*, for the purpose of bringing back our wounded and sick. I hereby express my appreciation of the benevolent intention of the vice-consul and doctors. Let them go and accomplish the matter as quickly as possible.

"29th of 10th year of Kwang-hsu."

As the matter concerned the wounded in the army, the Japanese navy sent over the certificates and the declaration to Marshal Count Ōyama, the commander-in-chief of the Japanese second expeditionary force. Having received these documents Count Ōyama began to make inquiries into the matter, and finally sent the following letter<sup>1</sup> to the members of the Tien-tsin Red Cross Society on board the *Too-nang* :—

"We appreciate the philanthropic spirit which prompted the action of transporting the wounded from one belligerent to the other. However it is very clear that a wounded man is nothing but a prisoner, and consequently the Chinese wounded are also prisoners of war and cannot be allowed to be taken to their own country, even though the request was made through the good offices of the consuls of neutral powers. But we have great pleasure in assuring you that it is our strict rule to treat wounded and sick with the utmost kindness, to whatsoever nation they may belong, and that the Chinese wounded are actually receiving medical treatment in the Japanese field hospital, which has abundant facilities for that purpose.

Consequently we have the honour of informing you that we desire you to leave the offing of Port Arthur by 6 p.m. of Nov. 30th.

We have the honour, etc.

*Signed : MARSHAL ŌYAMA,*  
*commander of the Japanese army.*

*Nov. 30th, 1894."*

<sup>1</sup> The letter is translated from the Official Report, No. 221, Dec. 1894.

Thus the *Too-nang* left Port Arthur on the evening of Nov. 30th for Tien-tsin, and afterwards a letter from C. D. Tenny bearing the date of Dec 24th reached Count Ōyama. In the letter he makes the following points :—

A. As members of the Tien-tsin Red Cross Society thought that there would be too many wounded for the Japanese surgeons to cope with, and as it was their intention to endeavour to cure the wounded as quickly as possible, they came to Port Arthur to take charge of them.

B. They thought that Count Ōyama would have no objection to granting the transfer of the Chinese wounded instead of keeping them as prisoners.

C. They were quite satisfied on learning that the Japanese field hospital was very well arranged and had abundant facilities for giving medical treatment, and that Japan was generous enough to treat the enemy's wounded as kindly as her own.

However, while the members of the Tien-tsin Red Cross Society were perfectly contented with the action of the Japanese commander, the false representations of some American newspaper correspondent again put a most unpleasant construction on "the Japanese rejection of the Red Cross." This erroneous report together with the story of the Port Arthur affair blinded some ignorant people to the true facts, and it was said that the ratification of the new treaty between the United States and Japan was hindered in consequence. But the true facts soon came to light through the explanation of the late foreign minister Count Mutsu. The following are the documents concerning it :—

An official telegram was received from the Japanese legation by Miss Clara Barton, president of the American Red Cross Society.

In order to correct the erroneous statement that the Red Cross had been rejected by Japan, the Japanese minister volunteered to

ascertain the facts from his government, and received the following message :—

"KURINO, WASHINGTON.

TOKYO, Dec. 16, 1894.

On Nov. 28th, after the fall of Port Arthur, a Chinese steamer had some men on board who stated that they belonged to a so-called private Red Cross Society of Tien-tsin, and asked that the wounded Chinese should be delivered to them for treatment at Tien-tsin. They produced a certificate from Li Hung-Chang and some of the foreign consuls. Our military authorities replied that while they appreciated the philanthropic spirit which prompted this action, the Chinese wounded were prisoners of war and could not be allowed to be taken to their own country, which was hostile to Japan, even though the request was made through the good offices of the consuls of neutral powers. They added that the Japanese field hospital would care for the wounded Chinese, for which purpose it had abundant facilities, and requested the Chinese vessel to leave the harbour within a specified time.

MUTSU,

*Minister for  
Foreign Affairs."*

Such were the details of the *Too-nang* affair. Let us proceed to make some inquiries into the affair from a legal point of view.

#### **Sect. XXVII. Observations on the Too-nang affair.**

In my opinion Count Ōyama's letter seems to require some supplement to explain the case. We will treat the matter under the two following heads :

##### *A. The description of the Too-nang.*

What would be the description of the *Too-nang*? In nationality she was an enemy's vessel, but she was under a Red Cross flag, and had many neutrals on board. It is clear that she was not a proper cartel



ship, although she bore some likeness to one and was fitted out by neutrals. Neither was it a hospital ship in a strict sense. According to the [unratified] Convention of 1868, such ships were to enjoy a complete neutrality if they have been officially designated as hospitals before the outbreak of war and if they are unfit for warlike use. I think the designation as hospital ships need not necessarily be prior to the commencement of war, and we actually so designated the *Kobé Maru* after the outbreak of the recent war without meeting with an objection from any one in the world. Allowing then that the designation could be given after the outbreak of war, still the *Too-nang* had no such designation. The certificates from neutral consuls had not the effect of making her a hospital ship; and Li Hung-Chang's declaration had no meaning from a legal point of view, but simply marked his approval of the actions of certain neutrals. Now could the flag of the Red Cross give some special qualification to the ship? The Tien-tsin Red Cross Society is not legitimate in its nature because China is not a signatory to the Geneva Convention, and it is very strange that such a society should be suddenly established where the Red Cross Convention had no value. According to the declaration of Li Hung-Chang he seemed to think that if any one put a badge on his arm he might have equal licence with a member of the Red Cross Society. This is a great mistake. Such a badge or a Red Cross flag unless provided by the proper authorities are simply useless decorations<sup>1</sup>. The society of Tien-tsin seems to have no relation to the Geneva Convention, and consequently it could not have equal

<sup>1</sup> See Holzendorff, Vol. IV. § 103, and the Geneva Convention, Art. 7.

privileges with the true societies simply because it was named the "Red Cross Society." For a similar reason the Chinese vessel *Too-nang* could not expect to be treated like those which have some connection with the Geneva Convention simply because she hoisted a Red Cross flag. Then what would be the nature of the ship? In my opinion she is a kind of hospital ship fitted out by a society for the aid of sick and wounded. The existence of such a ship is recognized in the Geneva Convention [unratified] of 1868, under which ships, says Mr Hall, "if provided with certain guarantees were recognised as neutral and permitted to operate under the reserve of a right of control and visit on the part of the belligerents<sup>1</sup>." Now assuming that she was that kind of ship, we cannot find anything contrary to the law of nations in the action of the Japanese commander, seeing that he refrained from enforcing any belligerent right.

B. *The Chinese wounded and sick.*

In Count Ōyama's letter it was said that as the Chinese wounded were nothing but prisoners of war they could not be taken to their own country. This is not a sufficient explanation of the refusal to deliver up the wounded to the *Too-nang*. According to Art. IV of the Geneva Convention commanders-in-chief have the power to deliver over soldiers, who have been wounded in an engagement, to the outposts of the enemy when circumstances permit this to be done. By virtue of this rule the Japanese commander had the power of handing over the Chinese wounded. So, in my opinion, it was not necessary in refusing to give them up, to say that as the Chinese wounded were

<sup>1</sup> See Hall, p. 418.

prisoners, he could not hand them over, and it would be quite enough to say that there was no necessity for troubling the Tien-tsin Red Cross Society to give medical treatment to the Chinese wounded, as those people were receiving the kindest medical treatment in the Japanese hospital, just like the Japanese themselves. Therefore on the whole we cannot but justify the action of the Japanese commander in this affair.

## PART II.

### MISCELLANEOUS AFFAIRS.

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#### CHAPTER I.

#### THE SURRENDER OF THE CHINESE SQUADRON.

THE surrender of the Chinese Pei-yang squadron not only takes rank as an extraordinary event in the naval history of the world, but it also exhibits many points interesting in their relation to international law. The convention of surrender, the discovery of neutrals in the enemy's service, and amongst them of a perjurer like Cameron, and the claim of damages by Dr Kirke are all most interesting facts. Let us treat them in this and the following chapters.

**Sect. XXVIII. The Letter of Admiral Ito to Admiral Ting to induce him to surrender.**

One night at the end of October, 1894, when the Japanese squadron was in the mouth of the Ta-tong river, Admiral S. Kavanura paid a visit to the late Admiral Tsuboi, who was always to be found on board the *Yoshino* and played a most brilliant part in

the naval operations. After dinner these admirals and their staffs entered into an earnest discussion regarding the future of the Chinese squadron, which at that time lay in Port Arthur, Talien-wan and Wei-hai-wei. The two talented admirals foresaw clearly the disastrous fate in store for the Chinese squadron, and there was an unanimous opinion among those present that one ought to try to persuade the Chinese admiral to surrender. Chief-engineer H. Takeda and I were present at the meeting, and we were ordered to compose a letter in readiness for such a contingency. The first draft was completed at the end of November, just after the occupation of Port Arthur, and Admiral Tsuboi handed it to that well-known officer Admiral Ito. This draft was the substance of the letter through which Admiral Ito succeeded in persuading Admiral Ting to surrender. At the beginning of February, 1895, the letter was at last sent to Admiral Ting through an English captain.

The following is the official copy of the letter addressed conjointly to the late Admiral Ting by Admiral Ito and Marshal Ōyama :—

“HONOURED SIR,

An unfortunate turn of events has made us enemies : but as the warfare of to-day does not imply animosity between each and all individuals, we hope our former friendship is still warm enough to assure Your Excellency that these lines, which we address to you with your kind permission, are dictated by a motive higher than that of a mere challenge to surrender. This motive is that of submitting to the calm consideration of a friend a reason for an action which seems to be truly conducive to the good of his country and of himself, although stress of circumstances might temporarily conceal this from him. To whatever cause the successive failures of Chinese arms on both sea and land may be attributed, we think

Your Excellency's sound judgement will not fail in assigning them to their true cause, which must be apparent to any unprejudiced observer. In China the literary class is still the governing section, and literary accomplishment is the chief if not the sole way to rank and power now as it was a thousand years ago. We do not venture to deny that this system is excellent in itself, and might well be permanent and sufficient if China were to stand alone in the world. But national isolation is no longer a possibility. Your Excellency must know what a hard experience the Japanese empire had thirty years ago, and how narrowly she escaped the awful calamity which threatened. To throw away the old principle and to adopt the new, as the sole condition of preserving the integrity of your empire, is as necessary with your government now as it was with ours. The necessity must be attended to, or fall is inevitable sooner or later. That the crisis is being brought about by the Japanese arms is mere chance. It might have been caused by other political difficulties, which are equally destructive. Now at such a juncture is it the part of a truly patriotic man, upon whom the necessity of action devolves, to allow himself to be simply dragged along by force of circumstances? Compared with the re-establishment on a sound working basis of the oldest empire in the world, with its glorious history and its extensive territories, what is the surrender of a fleet or the loss of a whole army? If Your Excellency be truly patriotic and loyal to the cause of your country, we beg you to listen to the words of sympathetic hearts filled with the sense of honour representative of the fighting men of Japan; words which ask you to come and stay in Japan until the time arrives when your services shall be required for the good cause. Not to speak of the numerous instances of final success after temporary humiliation in your own history of the ancient dynasties, let me call your attention to the case of the French Marshal Macmahon, who allowed himself to be detained in the enemy's land till it was expedient that he should return and aid in reforming the government, which instead of dishonouring him raised him to the presidency: or to the case of Osman Pasha whom the unfortunate event of Plevna did not prevent from subsequently filling the post of minister of war and rendering important services in reforming the army. As to the way in which Your Excellency may be received in Japan, let us assure you of the magnanimity of our sovereign. His Majesty not only pardoned his own subjects who fought against the imperial side, but even raised them to important positions according to their personal merits, as in the case

of Admiral Enomoto, Privy Councillor Otori and others. Surely he would be more magnanimous to one who is not his own subject, and whose glorious career is so well known to the world. The great problem with Your Excellency now is whether to submit to the great calamity which must be the inevitable consequence of further adherence to the old principle, or to survive it for the sake of future reform. We know it is the custom of your officials to meet any communication from an opponent with a pride designed to show consciousness of strength or to conceal weakness, but we hope Your Excellency will understand that the present communication is not made without due consideration of the vast interests at stake, but that it is the outcome of the truest sincerity and of feelings which should lead to the realization of those interests, and we hope you will kindly consider it in that light.

Should the present communication meet with your approval, the carrying out of its import will, with Your Excellency's permission, be arranged through further communications, and we have the honour to be etc., etc.

*signed*: COUNT ŌYAMA,

*signed*: ADMIRAL ITO.

*20th January, 1895."*

However, no answer was received until the 12th of February, as it was Admiral Ting's intention to continue fighting till every ship of the Pei-yang squadron was sunk, and the last sailor killed.

### **Sect. XXIX. The Proposal of Surrender.**

The poor remnants of the Pei-yang squadron kept fighting till the very last, in a manner well worthy of its fame. Admiral Ting and his officers had done all that men could do; escape was impossible; it was either capitulation or total annihilation. And so, at 8 a.m., one of the smaller gun-boats, the *Chen-Pei*, came steaming out of harbour flying a white flag. Ching Peih-kwang, the Chinese commander, was on board and brought a letter from Admiral Ting to the

commander of the Japanese squadron. The text ran as follows:—

“I, Ting, commander-in-chief of the Pei-yang squadron, acknowledge having previously received a letter from Vice-Admiral Ito, commander of the port of Sasebo. This letter I have not answered until to-day, owing to the hostilities going on between our fleets. It had been my intention to continue fighting until every one of my men-of-war was sunk and the last sailor killed; but I have reconsidered the matter and now request a truce, hoping thereby to save many lives. I earnestly beseech you to refrain from doing further hurt to the Chinese and Westerners serving in the army and navy of China, as well as to the townspeople of Wei-hai-wei; in return for which I offer to surrender to the empire of Japan all my men-of-war, the forts on Liu-kung-tau and all material of war in and about Wei-hai-wei. If Vice-Admiral Ito will accede to these terms, I desire to have the commander-in-chief of the British war-ships in the offing as a guarantor of the contract. Requesting an answer to this by to-morrow, I have the honour to remain, etc.

*signed:* ADMIRAL TING.

18th day, 1st month, 21st year of Kwanghsu (12th Feb. 1891).”

On the receipt of this letter a council was called hastily on board the *Matushima*, and the following answer was given:

“I have the honour to acknowledge the receipt of your esteemed favour, and to accept the proposal therein contained. Accordingly I shall take over all the men-of-war, the forts and all warlike material from your hands. As to the time when the surrender is to take place, I will consult you again on receiving your reply to this. My idea is, after taking over every thing, to escort you and the others referred to in your letter on board one of our war-ships to some safe place where your convenience may be suited. If I may be permitted to speak quite frankly, I advise you for your own and your country's sake to remain in Japan until the war is over. Should you decide to come to my country you may rest assured that you will be treated with distinguished consideration. But if you desire to return to your native land I shall of course put no obstacle in your path. As for any British guarantee, I think it quite unnecessary, and trust



in your honour as an officer and a gallant man. Requesting your reply to this by 10 a.m. to-morrow, I have the honour to remain etc.

*signed*: ADMIRAL ITO.

12th February, 1895."

At 8.25 a.m. the next day Commander Ching came once more, but this time in the *Chen-Chung* gun-boat, the Chinese flag flying at half mast. On handing Admiral Ting's reply to Admiral Ito he stated that, when the former had read the Japanese admiral's letter, he had said there was nothing left for him to desire, as Admiral Ito had acceded to his request; and then on the night of the 12th he had calmly taken his own life, and his example was promptly followed by Lui Pu-chen, captain of the sunken *Ting-Yuen*, and Chang-Wang-sen commander of the Liu-kung forts.

Admiral Ting's last letter, written just before the distressing event, was as follows:—

"I am delighted to learn that you are in the enjoyment of good health<sup>1</sup>. I thank you heartily for your kind reply, and the assurance that the lives of those under me will be spared. You have kindly forwarded me certain gifts, but while I thank you I cannot accept them, our two nations being at war. You write that you desire me to surrender everything into your hands to-morrow. This gives too short a period in which to make the necessary preparations, and I fear that the troops will not be able to evacuate the place by the time specified. I therefore pray you to wait until the 22nd day of the 1st month (Chinese calendar), February 16th. You need not fear that I shall go back from my word.

*signed*: ADMIRAL TING.

18th day, 1st month (12th February)."

On this Admiral Ito conferred with his staff officers, and finally sent the following reply:

<sup>1</sup> A much used formula at the beginning of Chinese letters.

HIS IMPERIAL MAJESTY'S SHIP *Matsushina*,  
February 13th, 1895.

To the officers representing the Chinese fleet at Wei-hai-wei.

I hereby acknowledge the receipt of the letter of Admiral Ting dated the 18th of January of the Chinese year. The report of the death of Admiral Ting last night, communicated verbally by the messenger who brought over the said letter, I received with great personal regret.

As to postponing taking over the vessels, forts and other materials of war until the 22nd of January of the Chinese year, I am ready to comply with it under a certain condition. This condition is that some responsible Chinese officer should come over to this our flag-ship *Matsushina* before 6 o'clock p.m. this day, the 13th of February according to the Japanese year, and we will then make certain arrangements, which have to be definitely fixed, regarding the taking over of the said vessels, forts and other materials of war, as well as the escorting of the Chinese and foreign officers and men out of Wei-hai-wei. In my last letter to the lamented Admiral Ting I stated that as to the hour and other minor conditions I should be glad to make arrangements with him on the morrow; so as he is now dead, these minor conditions have to be arranged with some one who can deal with us in his stead.

It is my express wish that the said officer who is to come to this our flag-ship for the above purpose be a Chinese, not a foreign officer, and be it understood that I am willing to receive him with honour.

J. K. ITO,  
*Vice-Admiral,*  
*Commander-in-Chief.*

### Sect. XXX. The Convention of Surrender.

Towards 7 p.m. of 13th February Tao-tai Niu Chang-Ping accompanied by Captain Ching came under a white flag to the *Matsushina*. He introduced himself as the representative of the naval and military forces at Wei-hai-wei. Admiral Ito then proposed to him several conditions relating to the vessels, forts

and materials of war, the escorting of the Chinese and foreign officers and men out of Wei-hai-wei, and so forth. After a consultation of several hours Tao-tai Niu and Captain Ching left the ship, arranging to come back before 2 p.m. on the 14th.

At 2 p.m. on the 14th Tao-tai Niu the Chinese plenipotentiary came again under a white flag accompanied by Captain Ching, and after further consultation the following terms were agreed upon between the two parties as conditions of capitulation, and the English version of them, which was to serve as the original text, was signed by Admiral Ito and Tao-tai Niu.

ART. I. That a list of the names, functions and ranks of all the naval and military officers, both Chinese and foreign, required to be transported in safety, should be produced. For foreigners, their nationalities should also be mentioned. As to soldiers, clerks etc., only their numbers are to be given.

ART. II. That all the naval and military officers, both Chinese and foreign, should pledge themselves by a formal declaration in writing that they will not re-engage themselves in the present war between Japan and China.

ART. III. That all the weapons, powder and projectiles for use of land forces on the Island of Liu-kung-tau should be collected in fixed places, and these places made known to us. The soldiers of the said land forces should be landed at Chiu-tau, and from thence they are to be conducted by Japanese guards to the outposts of the Japanese army now occupying the localities around Wei-hai-wei. The landing is to begin from 5 o'clock p.m. on the 14th of February, 1895 (20th January, Chinese calendar), and end before

noon on the 15th February, 1895 (21st January of the Chinese calendar).

ART. IV. That Tao-tai Niu, representing the Chinese naval and military forces at Wei-hai-wei as plenipotentiary, should appoint a suitable number of committees, for the delivery of the vessels and forts. These committees are required to send in before noon, February 15th, 1895, a list of the vessels and forts in their charge with the number and kinds of the guns, rifles and other weapons now contained in these vessels or forts.

ART. V. That the Chinese naval and military officers and men, native and foreign, should be allowed to leave Wei-hai-wei after noon on the 16th of February, 1895 (22nd of January of the Chinese calendar), in the steam-ship *Kwang-Chi*, sailing out of the harbour under the condition stipulated in Art. X.

ART. VI. That the Chinese naval and military officers, both native and foreign, should be allowed to take with them their personal movable property only, with the exception of arms, which are to be delivered up even if they be private property. Whenever deemed necessary the things they take away shall be submitted to inspection.

ART. VII. That the permanent residents, i.e. the original inhabitants of the Island of Liu-kung-tau, should be persuaded to continue their abode on the island.

ART. VIII. That the landing of the requisite number of the Japanese officers and men, on the Island of Liu-kung-tau, in order to take possession of the forts and materials of war on the island, should commence from 9 o'clock a.m. on the 16th of February,

1895 (22nd of January by Chinese calendar), but that Admiral Ito reserves to himself the right of sending a certain number of the Japanese men-of-war into the harbour, whenever the necessity occurs at any time after the signing of the present stipulations.

The naval officers, both native and foreign, on board the Chinese vessels may remain therein until 9 o'clock a.m. on the 16th February, 1895 (22nd January of Chinese calendar). Those marines, seamen etc. on board the same vessels who wish to be escorted out of Wei-hai-wei by land should be landed in the same place and escorted in the same way as the soldiers of the land forces, the landing to begin from noon on the 15th of February (21st January of Chinese calendar), that is to say after the landing of the soldiers of the land forces is finished.

ART. IX. That women, children, aged persons and other non-combatants who wish to leave the Island of Liu-kung-tau should be allowed to sail out of either the eastern or western mouth of the harbour in Chinese junks any time after the morning of the 15th of February, 1895 (21st January of the Chinese calendar). These vessels are however to be examined by the Japanese naval officers and men in the torpedo-boats or the other boats posted at the mouth of the harbour, the examination extending to both persons and baggage.

ART. X. That the coffins of the lamented Admiral Ting and the officers next to him should be allowed to be carried out of the harbour after noon on the 16th of February, 1895 (22nd of January of the Chinese calendar), and before noon on the 23rd of February, 1895 (29th January of the Chinese calendar),

in the steamer *Kwang-chi*, which Admiral Ito refrains from taking possession of and lays at the disposal of Tao-tai Niu as representing the Chinese navy and army at Wei-hai-wei, solely out of respect to the memory of Admiral Ting, who did his duty towards his country.

The said steamer *Kwang-chi* is to be inspected by the Japanese naval officers on the morning of the 15th February, 1895 (21st January of Chinese calendar), to see that she is not equipped as a war-vessel.

ART. XI. That it be always understood that after the present stipulations have been made the Chinese naval and military forces at Wei-hai-wei are to give up all hostile operations against the Japanese naval and military forces, and that the moment such operations are made the present stipulations shall lose effect at once and the Japanese naval and military forces shall resume hostilities.

*signed*: ADMIRAL ITO.

*signed*: NIU CHANG-PING.

16th February, 28th year of Meiji.

22nd of 1st month, 21st year of Kwangshu.

### **Sect. XXXI. Westerners in the Chinese Navy.**

On February 16th all the foreigners, 103 in number, were summoned to the Japanese flag-ship. According to Art. I. of the convention the following questions were put to them :

What is your name, age and nationality ?

When did you enter the service, whether navy or army ?

What was your career before entering the Chinese army or navy ?

We have omitted the names and answers given ; but among the foreigners, to our surprise, we found a certain Cameron who when captured in the previous year had sworn not to go to China again. We will discuss this man's case in the next chapter. The following is the pledge given by westerners in accordance with Art. II of the convention :

WEI-HAI-WEI.

*February 15th, 1895.*

The undersigned do hereby pledge themselves not to take part again in the present war between Japan and China...(names omitted).

## CHAPTER II.

### CAMERON'S CASE.

#### **Sect. XXXII. The career of Cameron after leaving Kobé.**

Now let us treat the peculiar case of George Cameron who broke the parole made on oath. First of all let us trace his movements after his release at Kobé<sup>1</sup>.

On the morning of the 25th of November, 1894, Cameron and Wild left Kobé on board the *Tacoma* for Hong-Kong; and they arrived at their destination on the 1st of December. There Cameron separated from Wild and proceeded alone to Shang-hai, where he stayed three or four days. Then he went to Che-foo and next to the Island of Liu-kung-tau near Wei-hai-wei. Arriving on the island between the 12th and 16th of December, he waited nearly a month for an opportunity of seeing Admiral Ting, and at last succeeded in obtaining an interview. After this he was appointed extra aide-de-camp, and was ordered on board the Chinese flag-ship the *Ting-Yuen*. It was said that he was always with the admiral, following him about wherever he went.

These facts were not known to the Japanese

<sup>1</sup> See Part I., Chap. III. § xiv.



authorities at the time, because it was hardly imagined that a man could be so dishonest. Moreover he was so utterly shameless that on being questioned by the officers as to whether he had ever been in Japan or not, he answered in the negative, and it is said that he showed so rebellious a spirit that he refused to sign as the other foreigners did, and put a pistol on the table to show his determination, though successful resistance was of course out of the question. Some of the naval officers insisted on putting him to death, quoting many instances in European countries. However Cameron was fortunate enough to escape capital punishment, and was sent to the military head-quarters in Japan on board the *Chi-yoda*, a Japanese man-of-war.

**Sect. XXXIII. The discussion about the Punishment of Cameron, and his Sentence.**

There was much discussion as to what Cameron's punishment should be. The chief opinions expressed may be classified under the following five heads.

- (1) *That Cameron should be released according to the terms of the letters between Admiral Ito and the late Admiral Ting.*

Some lawyers and the friends of Cameron maintained this view on the following grounds:

In Admiral Ting's letter they found the words:

"I beseech you most earnestly to refrain from doing further hurt to the Chinese and westerners in the service of the army and navy of China."

To this Admiral Ito answered by the following words:

"I have the honour to acknowledge the receipt of your esteemed favour, and to accept the proposal therein contained."

By this agreement it must be assumed that Cameron was included in the term "westerners," and he could not be deprived of the benefit of the contract whatever his former conduct. Moreover in the convention of surrender there was no provision for the prosecution of a foreigner such as Cameron. The breach of parole was a very heinous crime ; but all this occurred before the surrender and must have been pardoned by the above-mentioned agreement. It was a defect of the convention if it did not provide for a case of misconduct like Cameron's. But if Cameron should be punished why was the Chinese vice-admiral McClure allowed to go free? He was on board the *Ching-long*, a steamer which had served as a military despatch boat, and when that vessel was searched at Port Arthur he protested his neutrality in the war, while he was actually engaged in the most important hostilities. In fact McClure deceived the Japanese navy, but he was released in accordance with the provisions of the convention. There was no doubt that the action of Cameron was very contemptible from the point of view of morality, but from the legal point of view it could weigh only as an additional circumstance in punishing him. If then McClure was set at liberty Cameron must have the benefit of a like pardon. Such were the chief points maintained by those who insisted on the release of Cameron.

This view was opposed by many Japanese lawyers on the ground that the terms of the agreement between the two admirals would apply only to such westerners as had not been guilty of some crime, such as the breach of parole ; and that criminals like Cameron had no right to partake in the benefits of the convention.

(2) *That Cameron should be visited with the severest punishment, as his guilt deserved.*

Many persons upheld this view, quoting Vattel, Vol. III. Chap. VIII.; Martens, § 275; Bluntschli, § 617, § 626; instructions for U. S. armies in the field; Art. 159 of the German military code and others. They enumerated all the instances, and specially cited as precedents many cases which occurred during the Franco-German war. This opinion was opposed by some lawyers as being too shallow. Against it they upheld the view that in the first place Japan had no special criminal law for punishing breach of parole by foreigners, and in the second place Cameron could not be treated merely as a breaker of a parole, because he was one of the westerners benefiting by the convention of surrender.

(3) *That the Japanese authorities should enforce their jurisdiction over him.*

Many lawyers maintained this view on the following grounds:

According to Art. 30 of the Japanese naval criminal law the crimes of prisoners should be judged by a court-martial. So a court-martial had the right to judge Cameron, who was in their view a prisoner. As to the question of what law would be applicable, they admitted that no special rule could be found in Japanese law for punishing breach of parole by foreigners. Still they maintained their view by saying that international law is the proper law to apply to this case. To bear out this they quoted the case of "*Queen v. Keyn*," as showing that if there is no law applicable to a case international law can be adopted in its stead.

To this course however there were great objections. These were two-fold.

First, in the Japanese naval criminal law we found an article stating that the sentence of punishment must describe clearly the number of the article in the criminal law which is applicable to the case. Now in the case of Cameron no article concerning breach of parole by foreigners could be found in Japanese law.

Secondly, to put international law in the place of criminal law would be very convenient. But it must be remembered that international law is not the municipal law of Japan. Moreover it is not the Japanese custom to adopt some theory or opinion where no written law can be found. A judge has no power of initiating a law, and his precedents have not necessarily a binding force. Besides that, criminal law must be always strictly intelligible and no judge can extend the application of that law beyond its proper sphere. So if no article could be found in Japanese law to condemn a foreigner who broke parole made on oath, there was no more to be said.

(4) *That Cameron should be given up to the consul of the United States.*

This view was held by some foreigners, on the ground that the United States have the right of extritoriality.

This was unreasonable for (1) the right of extritoriality cannot be claimed in such a case happening in time of war; and (2) Cameron was the subject of a neutral state, but he had a hostile character since he had entered the Chinese military service, and consequently had no right to have the benefit of extritoriality even at a time when that right might be effective.

(5) *That Cameron should be kept prisoner until the end of the war by virtue of belligerent right.*

Most legal authorities maintained this view. They said that from the point of view of international law the execution of a breaker of a parole was in no way necessary, and that the proper way of punishing Cameron was to keep him in prison till the end of war.

This fifth opinion was adopted by the government, and an order was issued from the military headquarters that Cameron should be put in prison at Kuré, a Japanese naval station, until peace was restored. Thus he was imprisoned, and on the 15th of May, 1895, he was set at liberty and sent to Nagasaki. Such are the details of the Cameron case which induced us to undertake a great deal of unpalatable inquiry.

#### **Sect. XXXIV. My observations.**

Now let me add some remarks on this case. From the point of view of international law there is no doubt about the possibility of punishing Cameron with death. Albericus Gentilis maintained this position in his *de Jure Belli*. Vattel and Martens held the same opinion. The clearest statement is in the American instruction for the United States armies. It runs thus :

“Breaking parole is punished with death when the person breaking parole is captured again.”

And we can find the strictest principle in Lord St Vincent's letter<sup>1</sup>. So there can be no doubt that it is quite possible according to international law to

<sup>1</sup> Brenton, *The Life of St Vincent*.

shoot a breaker of parole. But this possibility is not necessarily inconsistent with the lenient principle of exempting a perjurer from death. The manual of the Institute for war on land of 1880 laid down the following penalty for a breaker of parole<sup>1</sup>:

Every prisoner of war, liberated on parole, who is recaptured in arms against the government to which he has given such parole, may be deprived of his rights and privileges as a prisoner of war, unless since his liberation he has been included in an unconditional exchange of prisoners.

If we refer to works on international law we can also find opinions in favour of leniency. For instance Pinheiro Ferreira, the commentator on Martens' *Précis du Droit des Gens*, in criticising the view of the latter writer, who held that "a person violating his parole may be punished with death," says:

The prisoner who has given his word of honour not to serve against us in order to be set at liberty is deserving of contempt, and if he becomes again a prisoner may be punished, but not with death. If to perjury be added a thousand other crimes, what punishment would the author reserve for him?<sup>2</sup>

This opinion is too lenient, as it does not allow a breaker of parole to be put to death in any case. Another lenient view as well as a severe one was given on the case of Colonel Hayne, who was executed in South Carolina for an alleged breach of parole, which case was brought to the notice of the House of Lords on Feb. 4, 1782, by the Duke of Richmond. It was contended on the one side that, allowing the facts to be as stated, on the ground of modern practice and ancient authority Colonel Hayne, having been taken in arms after admission to his parole, was liable to be

<sup>1</sup> *The Manual of War on Land of 1880*, Art. 78.

<sup>2</sup> Martens, tom. II., note 75, p. 388.

hanged up *instantly*, without any other form of trial than what was necessary to identify the person; and the authority of Earl Cornwallis was cited to show that such had been the practice in several instances during his command in America. On the other hand it was asserted by the Earl of Shelburne, from his personal knowledge, that "the practice in the last war had been totally different. A greater degree of ignominy, perhaps a stricter confinement, was the consequence of such an action as breach of parole; the persons guilty of it were shunned by gentlemen, but it had never before entered into the mind of a commander to hang them<sup>1</sup>."

Now in the case of Cameron, if the Japanese commander had shot him at Wei-hai-wei, where he found him, as an enforcement of belligerent rights, no confusion would have arisen. But as a matter of fact he was brought to Japan where there is no law against a breach of parole by a foreigner, and hence some confusion did arise.

But it must be noticed that from the point of view of international law the Japanese position as regards Cameron was not qualified by his coming to Japan, since she had the right, as a belligerent, of punishing him either at Wei-hai-wei or in Japan.

The proper punishment in my opinion, in accordance with Art. 78 of the Manual of the Institute, would be that Japan should deprive him of his rights and privileges as a prisoner of war and place him in strict confinement.

<sup>1</sup> *Annual Register*, 1782, p. 157.

## CHAPTER III.

### THE CLAIM FOR DAMAGES BY DR KIRKE.

#### **Sect. XXXV. Dr Kirke's claim.**

ALL westerners in Wei-hai-wei were released by virtue of the agreement between Admirals Ito and Ting. Among these there was a certain Dr Kirke who had resided in a house very near the Chinese naval college at Liu-kung-tau. With the other westerners he was allowed to leave the island on board the *Kwang-chi* on the 23rd of February, 1895. Afterwards he wrote a letter to Admiral Ito with reference to his property in Liu-kung-tau. The following is a summary of the letter:—

“I am very sorry to say that I had no chance of seeing you when I was leaving Liu-kung-tau, as the time of the *Kwang-chi's* departure was strictly fixed. Indeed it was my earnest desire to ask you for special protection for my house and other property, and at the same time I wished to ascertain whether you would look upon me as an illegal person who had entered the enemy's service, or would recognise me as a true neutral earnestly endeavouring to heal the Chinese sick and wounded in accordance with benevolent doctrines. I believe you are of the latter opinion; and I trusted that all my properties in Liu-kung-tau would be under your protection. But to my surprise I discovered that the fact is quite contrary to my expectation. By three o'clock on the day of the *Kwang-chi's* departure I had embarked on the ship, and as there was a little time



before starting I went again on the island to look at my house. On the way I actually caught a glimpse of a sailor carrying off my own books. Moreover, according to an English officer who visited the island subsequently, it is certain that all my property was treated just like what belonged to the neutrals in the enemy's service.

I take the great liberty of calling your attention to the fact that my house was marked distinctly with Red Crosses both in front and at the back, and besides these there was abundant evidence of its being the house of a member of the Red Cross Society. Were those things which bore the Red Cross not worthy of your protection<sup>1</sup>?"

The main object of this letter was simply a demand for certain damages for the loss of his property.

I was ordered to go to Liu-kung-tau to make close inquiries into the matter. The details will be given in the next section.

#### **Sect. XXXVI. My inquiries into the affair.**

On the 2nd of May I went to Wei-hai-wei to see the house and make investigations. From the 3rd till the 12th I was busily engaged in this commission, and at last I succeeded in finding out the following facts:—

1. The Red Crosses on the wall of the house were painted with red ink, probably in great haste. The date of their painting could not have been earlier than two months before my inspection, and many splashes of the red ink could be seen on the stones at the base of the walls. It was clear that the doctor or some other person had painted them on leaving the house.

2. According to the words of the Chinese civil officer who remained in Liu-kung-tau, the house did not belong to any private person but to the Chinese government.

<sup>1</sup> Taken from the *Law Review*. No. 12, 1896. Tokyo.

3. The articles adapted for medical purposes, which judging from the Chinese letter or signature upon them had very distinct evidence of belonging to the Chinese government, were used by the Japanese for the benefit of the sick and wounded, especially the Chinese.

4. There was no evidence that Dr Kirke's private property was taken by Japanese soldiers, although I made very minute inquiries into that point.

Thereupon I forwarded the following report to Admiral Tsuboi:—

I. In Art. 10 of the Wei-hai-wei convention, we find that 'the coffins of Admiral Ting and those of the officers next in rank shall be sent out of the harbour at any time between noon of February 16th and noon of February 23rd, the *Kwang-Chi* acting as transport.'

This convention was signed by both parties on the 14th of February. Now if the doctor wished to see Admiral Ito, there was plenty of time between the 16th and 23rd, as was clearly set down in the convention. The doctor must have been acquainted with this fact because the convention was known to all Chinese officers and westerners on the 15th. Why did not the doctor call on Admiral Ito or some other Japanese officer appointed to receive all the things at Liu-kung-tau? So the first part of his letter is quite unreasonable, and it is through nothing but negligence on his part that he did not see Admiral Ito.

II. Should the Red Cross painted on the wall of a house at random be respected as the uniform flag in Art. 7 of the Geneva Convention?

Merely to paint a red cross on a wall is an actual

abuse of the Red Cross, and could not command even a shadow of respect. Lueder says :—

“Es sind deshalb Massregeln zu treffen, durch welche solche Missbräuchen vorgebeugt und zugleich der gegenüberstehenden Seite die grösstmögliche Sicherheit gegeben wird, sich zu überzeugen, dass das Zeichen mit Recht getragen und der durch dasselbe gewährleistete Schutz nicht von Unberechtigten in Anspruch genommen wird. Diesem Zwecke würde namentlich dadurch gedient werden können, dass das Zeichen nur regierungsseitig verabfolgt wird, dass es zur Garantie seiner Echtheit mit einem Stempel versehen sein muss und nur unter Controle der Regierung und von ihr oder einer regierungsseitig autorisirten Person ertheilt werden darf, und dass ausserdem die betreffenden Personen und Aushalten eine schriftliche Legitimation und eine die Identität bescheinigende Urkunde bei sich führen müssen, so dass nur diejenigen Personen und Sachen, die allen diesen Bedingungen genügen, den Anspruch auf Schutz haben—die gegenüberstehende Macht aber braucht das von ihr als unberechtigt erkannte Tragen des Zeichens natürlich nicht zu respectiren<sup>1</sup>.”

China was not a signatory to the Geneva Convention of 1864, and consequently it is clear that the government did not take the necessary steps as mentioned by Lueder, and so far as I made inquiries there was no special evidence that the house should be treated as neutral, except those painted red crosses. But such red crosses are not entitled to the same treatment as the uniform sign of the real Red Cross by the above-mentioned principle.

III. Is the Japanese government in any way responsible for the property of the doctor?

In treating this question it must be noticed that there are two kinds of property.

A. The equipment of the hospitals, which is public property.

B. Private property, namely,

<sup>1</sup> Holtzendorff's *Handbuch des Völkerrechts*, Vol. IV. § 103.

(1) The articles for medical purposes which belong to a person as his private property :

(2) All other private and personal property.

In Art. 6 of the Wei-hai-wei convention this distinction was clearly made. Art. 6 runs thus :—

‘The Chinese naval and military officers, of native or foreign birth, shall be permitted to take with them only their private and personal property, but not their weapons. And even this property shall, if deemed necessary, be examined and may be confiscated.’

Now let us treat the subject under the following heads :—

A. Were there any goods in the doctor’s house which ought to have been treated as part of the equipment of the hospital ?

According to Art. 4 of the Geneva Convention of 1864 the equipment of hospitals remains subject to the law of war<sup>1</sup>. Now the house of the doctor was neither a military hospital nor an ambulance. But there were some articles for medical purposes which bore very distinct marks, showing that they belonged to the Chinese government. As these things were public property, there was no objection to using them for the benevolent purpose of helping the wounded or sick, especially Chinese. These things should properly come under the law of war<sup>2</sup>.

B. The articles for medical purposes, which seemed to belong to Dr Kirke.

We have seen that the articles for medical use which belong to a person are quite different in nature from the equipment of a military hospital. He can carry them away as his own property, according to the rules of international law. Now by Art. 6 of

<sup>1 2</sup> See the explanation by Lueder.

the Wei-hai-wei convention he was also permitted to take these articles with him. Whether he would carry away these articles or not was quite his own affair, and it is very clear that the Japanese authorities were not responsible for the things which he left behind of his own accord. It would also be amply sufficient to rebut the claim of damage to these articles to say that the Japanese soldiers were not allowed to do any mischief, that the military and naval officers had perfect control over them, and that the Chinese people showed great rascality in pilfering even in the Japanese camp.

C. The private property.

1. The house.

Dr Kirke seemed to complain about the house. But so far as I could gather from my inquiries the house belonged to the Chinese government. To whomsoever it belonged the house was not damaged at all, and there is no necessity to discuss this point.

2. All other property.

The position is quite the same with those medical implements which belonged to the doctor. The Japanese authorities were not responsible for what happened to the property which he left behind, seeing that he was allowed to carry it away with him.

*signed*: S. TAKAHASHI.

May 12, 1895.

The Japanese officers without exception displayed the utmost generosity to the westerners throughout the period of the surrender of the Pei-yang squadron, and I venture to say that the doctor's demands were unfounded. Afterwards the doctor sent no more letters.

## CHAPTER IV.

### THE BOMBARDMENT OF TUNG-CHOW<sup>1</sup>.

#### **Sect. XXXVII. The Bombardment.**

ON the 18th and 19th of January, 1895, a Japanese squadron bombarded Tung-chow in Shan-tung, in order to divert the attention of the Chinese troops from Yung-cheng, the point at which the Japanese force was to land. Tung-chow is a maritime town of some 20,000 inhabitants. It lies nearly 100 miles to the west of Yung-cheng, and its bay forms an excellent harbour with a good landing place. The entrance to the cove is guarded by a fort, the armament of which was recently strengthened by four 21-centimetre and six 15-centimetre Krupp guns, as well as by three quick-firing guns. The town has stout walls, upon which are mounted some twenty old pieces of ordnance dating back to the days of the Taiping rebellion<sup>2</sup>.

Foreseeing that the place might be chosen by the Japanese for the purpose of landing a force the governor is said to have taken measures about a month before to increase the artillery defences and reinforce the garrison, so that the latter at the time of the Japanese bombardment consisted of 3,238 infantry,

<sup>1</sup> See the *Japan Weekly Mail*, No. 7, Vol. XXII., Feb. 16.

<sup>2</sup> All these details are taken from the *North China Daily News*, 1895.

500 cavalry and 520 artillerymen with 16 field and position guns of various calibre. The Japanese squadron steamed towards the place on January 18th, but a heavy fall of snow prevented operations until nearly 4 o'clock in the afternoon, when the ships fired a few rounds. At first blank ammunition was used, but on sighting the vessels the Chinese garrison ran out a battery of eight guns to a position near the northern gate of the castle, and as these opened fire on the squadron, the Japanese replied with shells. Among the guns in the Chinese battery there were some 12-centimetre pieces, the shot from which struck very near the ships. After 20 minutes' engagement the Japanese squadron steamed away and anchored for the night at Shenchi Island. The following day at 1.15 p.m. the bombardment was renewed. By that time the Chinese had placed some twenty guns in a battery outside the town, and twenty were also ready at the entrance, so the Japanese were received with a hot fire from two places. The Japanese ships steamed slowly to and fro, commencing their practice with blank ammunition, and subsequently loading with shell. This artillery duel lasted for 75 minutes, when the squadron steamed away to join the flotilla then starting from Ta-lien Bay for Yung-cheng.

The operation, never intended to be more than a diversion, was altogether insignificant, but the details here given are worth recording because the missionaries in Tung-chow formulated a complaint that the Japanese wantonly bombarded a peaceful town.

The ground of their accusations was in general three-fold, viz. :—

1st. That the Japanese squadron had fired on a town where no strong fortification was found.

2ndly. That the firing was intentionally directed to the quarters inhabited by civilians.

3rdly. That the Japanese commanders paid no attention to a small boat flying the American and a white flag, and containing the Rev. Mr Hayes, a missionary, who put off from the town to try and induce the ships to refrain from cruel and wanton destruction of innocent lives and property.

As to the first point, there can be no serious discussion, because the bombardment of an open or undefended town is generally deemed illegal, as noticed by several writers<sup>1</sup>. Now Tung-chow was well fortified, as the newspaper in which these accusations were found described it. Moreover the fort took the initiative in firing at the Japanese squadron, so no stain could rest on the Japanese arms for bombarding Tung-chow, even if it had not been an important piece of strategy.

As to the second point of the accusations, there is no legal point and it is entirely a question of fact. If the Japanese intentionally directed the fire to the quarter inhabited by civilians, while it was quite possible to avoid it in firing at the fortifications and military buildings, their action would be nothing but an outrage against the principles of international law. But as a matter of fact such was not the case. The Japanese navy never fired intentionally at a spot where civilians lived. To show this, let us quote an extract of the report by Captain J. Kawara, the commander of the *Yoshino*.

<sup>1</sup> Brussels project, Art. 13; *Manual of the Institute of International Law*, Arts. 31-34. Holtzendorff, Vol. IV. § 109. Bluntschli, § 552. Hall, § 187. Holland, *Studies in International Law*, pp. 96-111.



"18th of January 1895.

6.10 a.m. With the *Akitsusu* and the *Naniwa*, we started from Ta-lien Bay. By mid-day it began to snow and the air became so thick and dark that we could not see beyond a few yards.

2.40 p.m. We came within nine or ten miles of Tung-chow, and saw many red flags on the walls of the castle.

3.2 p.m. We loaded our guns with blank ammunition.

3.10 p.m. We saw some signals hoisted on the castle and clearly distinguished many guns trained in our direction.

3.40 p.m. The Chinese army directed a hot fire on our squadron from the northern gate of the castle.

3.45 p.m. We were ordered to fire at the fort.

At first each of the guns on our starboard side fired a blank shot, in order to warm the metal, and then we fired two shells from each. The distance was nearly 3000 metres; most of the shells reached the northern side of Tan-yae Hill, and the northern gate of the castle from whence the Chinese soldiers were firing at our fleet.

4 p.m. We stopped firing and steamed away for Miau-tau Island.

4.18 p.m. The forts were still continuing their fire.

19th January.

1 p.m. We came close up to the castle.

1.15 p.m. We noticed that the red flags on the castle were much more numerous. The *Naniwa* began to fire blank shot. Then our *Yoshino* followed her.

1.45 p.m. The *Akitsusu* fired at the northern gate. The distance was 4,000 metres. At that time we noticed a small boat which came out from the harbour hoisting an American and a white flag, and stopped at some distance as if it was awaiting our closer approach.

1.51 p.m. The Chinese fired on us from a distance of 4,500 metres. The shell passed over our *Yoshino* and fell in the sea. Many field and position guns followed this example and concentrated a very hot fire on our squadron.

2.34 p.m. We fired again on the forts of Tung-chow, and the enemy replied.

2.41 p.m. Our squadron steamed away to join the main squadron at Yung-cheng.

signed: Y. KAWARA,

commander of the *Yoshino*."

This report, bearing the date of 20th of January, is worth noting as the authoritative record of the affair. According to its entries it seems that the spots at which the Japanese squadron fired were only the forts, the northern gate from which the Chinese fired at the Japanese squadron, and Tan-yae Hill. So it is clear that the accusation contained in the 2nd point is utterly groundless.

As to the 3rd point, we cannot determine whether the accusation was seriously preferred. The Japanese ships were under weigh the whole time, and were actually receiving the fire of the Chinese forts and batteries when the missionary came out with the American flag.

The above-mentioned report shows that the Japanese naval officers did not suspect the occupant of the boat of any desire to parley. Why should they indeed? They were fighting the Chinese, and so long as the latter kept up their cannonade the white flag in a neutral's boat could not be supposed to have any reference to the hostilities then proceeding. Had the arrival of the little boat been preluded by a cessation of the Chinese fire the situation would have been different, but under the circumstances we venture to say that no naval commander would have stopped his ship for the purpose of receiving such a messenger. The Japanese supposed that he had come out to see the fight, and they left him to his own devices<sup>1</sup>.

In respect of this affair Professor Holland made a short remark in his Essay on *International Law in the war between Japan and China*<sup>2</sup>. He said "The bombardment of Tung-chow by a Japanese squadron,

<sup>1</sup> The details will be found in *The Japan Mail*.

<sup>2</sup> Holland, *Studies in International Law*, p. 118.

as a feint, in January last, was complained of by the missionaries, on the ground that it is an open town. But there seems to be no doubt that it is defended by forts, which replied to the enemy's fire."

The remark was very brief, but it is quite enough to show that the bombardment was of no importance from the point of view of international law. The only value of the affair is that it merely contributes an instance of a lawful bombardment.

## CHAPTER V.

### THE JAPANESE REQUISITION REGULATIONS.

#### **Sect. XXXVIII. The Requisition Regulations of the Japanese Army.**

IN old times the idea of each belligerent was to inflict a maximum of indiscriminate injury upon the other. No distinction between military and civil was acknowledged. An invasion was a savage foray, far more terrible for the peaceful inhabitants of the invaded territory than for the soldiers engaged in its defence. "Personal property remained exposed to appropriation by an enemy; and so late as the seventeenth century armies lived wholly upon the countries which they invaded, and swept away what they could not eat by the exercise of indiscriminate pillage. But gradually the harshness of war was softened, partly from an increase of humane feeling, partly for the selfish advantage of belligerents who saw that the efficiency of their soldiers was diminished by the looseness of discipline inseparable from marauding habits, and who found that their further operations were embarrassed in countries of which the resources were destroyed. A custom grew of allowing the inhabitants of a district to buy immunity from plunder

by the payment of a sum of money agreed upon between them and the invader, and by furnishing him with specified quantities of articles required for the use of his army; and this custom has since hardened into a definite usage, so that the seizure of movables or other personal property in its bare form, except in a very few cases, become illegal<sup>1</sup>. The great commander in the war of the Spanish succession would appear to have accepted the general principle that while a belligerent might levy contributions on the districts occupied by him, such contributions must be reasonable in amount, and at least on one occasion Marlborough entered into special arrangements with commissioners despatched by the enemy as to the amount of contribution to be levied in particular localities<sup>2</sup>. Bonaparte's methods were emphatically retrogressive. When he entered Italy in 1796, he marched with few or no supplies of his own and compelled the rich districts he subdued to feed and clothe his hungry and ragged regiments. Throughout his career he endeavoured, with marked success, to act upon the principle of making each war support itself<sup>3</sup>. Wellington on the contrary avoided such practices, and in response to some expression of impatience from the British ministry replied that requisitions, which needed terror and the bayonet for their enforcement, were unsuited to the temper and habits of the British soldier, and were more likely to injure than to benefit those resorting to them. His procedure presaged the ethics now enunciated by international jurists, namely that private persons remaining quiet and taking no part in the conflict are to be unmolested, and their

<sup>1</sup> See Hall, p. 442.

<sup>2</sup> Marlborough's *Despatches*, Vol. v. pp. 30, 212.

<sup>3</sup> Lawrence, *Principles of International Law*, p. 374.

property is to remain uninjured; and that although such property may be requisitioned should the wants of an invading army dictate such a course, a fair price, assessed by authorized persons, must be paid for it. "Recent military codes contain a number of rules drawn up with the object of making the process of levying requisitions as orderly and as little burdensome as possible. The best practice is for the commanders of detached corps to requisition objects of immediate use, such as food and fodder, while the commander of the whole army requisitions articles that take some time to supply, such as clothing and boots<sup>1</sup>."

Now let us glance at the Japanese principles as regards requisition. The following quotation from my work *The development of the Japanese idea of International Law* will give a sufficient idea of their trend, unchanged from the earliest times.

In Art. 32 of the Institute's Manual of the Laws of War on Land, 1880, it is forbidden, "(a) to pillage even places taken by assault, (b) to destroy public or private property." But these notions were acted upon in practice in Japan from time immemorial. It is stated in Vol. v. of Bugaku-shusui (Gems of Military Tactics) that, "it is called 'plunder' to take by force corn or food from people's houses in the enemy's land; it is called 'violence' to take by force the property of people by chasing them out of their houses; and such ignoble acts should be rejected by all commanders." The Japanese military discipline from ancient times is shown clearly in an old-time saying, that "no warrior takes anything by force".

This Japanese idea, strengthened by the more systematic and well polished example of European nations, induced Japan during the war with China to endeavour to furnish the most civilized instance in the history of war, as far as requisitions are concerned.

Field-Marshal Ōyama, shortly after the debarkation

<sup>1</sup> Lawrence, *Principles of International Law*, p. 376.

of the Second Army in the Liao-tung peninsula, issued a body of regulations on the subject of requisitions. Their purpose is to prevent abuses of the authority naturally possessed by invaders in a temporarily conquered territory. The general principle underlying them is that the peaceful inhabitants of an enemy's country must not be required to discharge any services other than those essential to the maintenance of the invading army or the promotion of its military capacity, and that all services rendered by the people under such requisitions must be duly recompensed. This principle is translated into detailed instructions. The following are the requisition regulations.

#### THE REQUISITION REGULATIONS.

ART. 1.—Except in cases duly provided for in field commissariat regulations, a requisition must not be enforced for the convenience either of a combatant or a non-combatant attached to the army, provided that the procuring of an article by mutual consent shall not fall under this restriction.

ART. 2.—The enforcement of a requisition shall be limited to objects essential for the subsistence or lodgment of the troops, or to the discharge of fatigue duties, works of transport and organization of services for the transmission of messages. Should it be deemed necessary to requisition anything not here enumerated, the sanction of the commander-in-chief must be obtained.

ART. 3.—Requisitions of money should be limited to cases where, in consequence of the scarcity of objects to be requisitioned in a given district, it becomes necessary to procure them in some other district, or to cases where, owing to special conditions, the process of procuring articles by requisition is considered incapable of speedy execution without paying ready money. In every case where a pecuniary requisition is to be carried out, the approval of the commander-in-chief should be first obtained.

ART. 4.—The foregoing provisions shall not apply to cases where, with the view of procuring funds necessary for the discharge of administrative functions in a place occupied by the army, a tax

has to be levied, or where penalties have to be imposed upon people of the country for infractions of rules and ordinances proclaimed in the district.

ART. 5.—No objection exists to the employment of inhabitants of the enemy's territories for the purposes of transportation, construction of buildings, discharge of the functions of guides or other business; but they shall not be employed for works directly connected with warfare.

ART. 6.—When a requisition is enforced, the cost or charges pertaining thereto should be paid as far as possible in the currency of the land, at a rate deemed appropriate, though not necessarily so large as to obtain the consent of the owners of the requisitioned articles. In case of a deficiency of local currency, the payment may be made with Japanese coins at the rate of 1.40 *yen* of silver to one *tael* of Chinese money.

ART. 7.—In case it is not possible to effect payment at once, a requisition note of prescribed form should be issued. On such requisition note the official title and name of the commanding officer by whose orders the requisition is made must be inscribed and his stamp affixed; further, the kinds and quantities of requisitioned articles, their prices reckoned in local currency, the date and other details shall be clearly specified.

ART. 8.—Copies of the requisition notes above-mentioned shall be forwarded to the commander-in-chief.

ART. 9.—When the inhabitants of the enemy's territories are required to supply articles in accordance with a requisition, their respective competence to do so shall be duly considered. Moreover, native tax-collectors, regularly appointed to that post, should be employed as far as possible in enforcing requisitions.

ART. 10.—In cases where persons that have supplied articles according to requisition fly away, so that the payment of monies due to them under requisition notes is not possible, an announcement to that effect shall be placarded in suitable places, declaring that the said monies shall be handed to persons duly authorized to receive them and applying through competent local officers.

The above regulations were strictly adhered to by the second expeditionary army throughout the war.

It must be added that these were also the principles which Marshal Yamagata had steadily enforced in his



Manchurian campaign—with the first expeditionary army of Japan.

**Sect. XXXIX. The Naval Instructions on Requisitions.**

Hall says: "A vessel of war or a squadron cannot be sent to sea in an efficient state without having on board a plentiful supply of stores identical with or analogous to those which form the usual and proper subjects of requisition by a military force. It is only in exceptional and unforeseen circumstances that a naval force can find itself in need of food or of clothing; when it is in want of these, or of coal or of other articles of necessity, it can unquestionably demand to be supplied wherever it is in a position to seize; it should not be tempted to make the requisition except in case of real need." In this explanation he lays down that a vessel of war or a squadron has certainly the right of enforcing requisitions. I quite agree with his conclusion, but it appears to me that his explanation is not satisfactory. He says that it is only in exceptional and unforeseen circumstances that a naval force can find itself in need of food etc. But on the contrary every squadron in time of war is liable to the incessant want of fresh meat, vegetables, water etc. It must be noticed that in time of war a belligerent's fleet is often obliged to conceal its movements from the enemy and sometimes even from its own nation, for days and sometimes weeks. In such a case it is often expedient to supply fresh provision and water (for men and engines) etc. from any suitable place which the fleet is passing, and naturally a requisition, not only for these goods but also for labour, becomes very necessary.

It is true that a vessel of war or a squadron is usually provided with a plentiful supply of stores, as Hall says; but that supply generally consists of the things which will keep, such as tinned provisions, and is not at all "identical with or analogous to those which form the usual and proper subject of requisitions by a military force."

So it must be added to the reasons given by Hall that we must expect a navy to have most pressing necessities for levying requisitions, that is whenever it is in want of fresh provisions.

Under certain conditions a naval force has therefore the right of requisition. But there is a great question as to the extent to which a navy can enforce this right, and as to the means which should be used to facilitate its enforcement.

In 1882 Admiral Aube, in an article on the naval warfare of the future, expressed his opinion that "armoured fleets in possession of the sea will turn their powers of attack and destruction against the coast towns of the enemy, irrespectively of whether these are fortified or not, or whether they are commercial or military, and will burn them and lay them in ruins, or at the very least will hold them mercilessly to ransom;" and he pointed out that to adopt this course would be the true policy of France in the event of a war with England. There is no reason to believe that either political or naval opinion in France dissented from these views; very shortly after their publication Admiral Aube was appointed minister of marine; and he was allowed to change the shipbuilding programme of the country, and to furnish it with precisely the class of ships needed to carry them out.

During the English naval manœuvres of 1888, an attempt was made to bring home to the inhabitants of commercial ports what the consequences of deficient maritime protection might be, by inflicting imaginary bombardments and levying imaginary contributions upon various places along the coast<sup>1</sup>. Prof. Holland discussed this action at the time, and fully laid down the principles regarding bombardment and requisition by a navy. He says :

"I need hardly say that I do not, as Captain James supposes, contend 'that unfortified towns will never be bombarded or ransomed.' International law has never prohibited, though it has attempted to restrict, the bombardment of such towns."

"The bombardment of an unfortified town would, I conceive, be lawful—(1) as a punishment for disloyal conduct; (2) in extreme cases as retaliation for disloyal conduct elsewhere; (3) for the purpose of quelling armed resistance (not as a punishment for resistance when quelled); (4) *in case of refusal of reasonable supplies requisitioned or of a reasonable money contribution in lieu of supplies*. It would, I conceive, be unlawful—(1) for the purpose of enforcing a fancy contribution or ransom, such as we were told was exacted from Liverpool; (2) by way of wanton injury to private property, such as was supposed to have been caused in the Clyde and at Folkestone, and *a fortiori* such as would have resulted from the anticipated shelling during the night-time of the south coast of the Isle of Wight<sup>2</sup>."

A controversy taking place two years later, that is in 1890, regarding the bombardment of the Hague, the same professor again wrote a letter dealing with the matter. He said :

"The Hague is an open town, containing a large inoffensive population, fine public buildings, and art collections. Though within cannon range, it is out of sight of a squadron at sea.

"So far, I think, it would be exempted from naval bombardment, unless possibly on refusal to supply requisitions indispensably neces-

<sup>1</sup> *Hall*, p. 450.

<sup>2</sup> Holland, *Studies in International Law*, pp. 98—99.

sary for the fleet, or by way of retaliation for some gross infringement of the law of nations by the Dutch."

Thus the principle was laid down clearly by the above-mentioned professor, and in 1896 it became still more generally known after the discussion in the Institut de Droit International. On the whole it would be almost pedantry to deny a right of facilitating the enforcement of requisitions by bombardment or other means of intimidation.

During the Chino-Japanese war Admiral Ito acted very generously while carrying out the right of requisition. On the 29th of October, 1894, when the Japanese squadron was manœuvring near Blonde Island in the Yellow Sea, the admiral gave the following instructions to the officers under his command:

"Let it be known to every member of our squadron that although we are in very great want of fresh provisions, water etc., requisitions must be carried out in the most gentle manner; intimidating means should not be used as far as they can be avoided. A proper price should be paid at once to the people who supply the required provisions or labour."

On the 25th of October, 1894, when the Japanese navy was busily engaged in landing the second expeditionary army on the peninsula of Liao-tung, a good instance of naval requisition was furnished. At that time nearly 20,000 troops had to be put ashore through the shallow water near the coast, and that so quickly and quietly as to be unnoticed by the enemy. A large quantity of timber was therefore required at once, to make rafts for facilitating the landing of horses, ammunition, provisions etc.

Most conveniently a considerable number of Chinese ships laden with large balks of timber passed off

the place where the Japanese army was landing. The Japanese man-of-war *Oshima* and some other vessels were at once sent to bring them in to the coast. Thirteen of them were brought in, and the timber on board was requisitioned; but the Japanese admiral was generous enough to pay a large price for it.

This generous principle was always followed during the whole of the war, as at Ta-lien, Port Arthur, Wei-hai-wei, Liu-kung-tau, Sho-ping-tau, Yung-cheng etc., wherever it was absolutely necessary to procure provisions or enlist labour for coaling and watering.

The most interesting feature of the above facts is that they furnish additional proof of Japan's resolve to conduct the war in accordance with the most civilized modern principles; and it must be noticed how honourable these actions are to Japan, especially when we remember that she was fighting against a nation which acknowledges no law of war, makes no provision whatever for the proper treatment of the private property of the subjects of a hostile state, and does not attempt by a resolute effort to restrain its troops from pillage and incendiarism even within its own territories.

## APPENDIX.

### I.

#### IMPERIAL JAPANESE RESCRIPT DECLARING WAR.

*(Official translation.)*

WE, by the grace of Heaven, Emperor of Japan, seated on a throne occupied by the same dynasty from time immemorial, do hereby make proclamation to all Our loyal and brave subjects as follows:—

We hereby declare war against China, and We command each and all of Our competent authorities, in obedience to Our wish and with a view to the attainment of the national aim, to carry on hostilities by sea and by land against China, with all the means at their disposal, consistently with the law of nations.

During the past three decades of Our reign, Our constant aim has been to further the peaceful progress of the country in civilization; and being sensible of the evils inseparable from complications with foreign states, it has always been Our pleasure to instruct Our ministers of state to labour for the promotion of friendly relations with Our treaty powers. We are gratified to know that the relations of Our empire with those powers have yearly increased in good-will and in friendship. Under the circumstances, We were unprepared for such a conspicuous want of amity and of good faith as has been manifested by China in her conduct toward this country in connection with the Korean affair.

Korea is an independent state. She was first introduced into the family of nations by the advice and under the

guidance of Japan. It has, however, been China's habit to designate Korea as her dependency, and both openly and secretly to interfere with her domestic affairs. At the time of the recent civil insurrection in Korea, China despatched troops thither, alleging that her purpose was to afford succour to her dependent state. We, in virtue of the treaty concluded with Korea in 1882, and looking to possible emergencies, caused a military force to be sent to that country.

Wishing to procure for Korea freedom from the calamity of perpetual disturbance, and thereby to maintain the peace of the East in general, Japan invited China's co-operation for the accomplishment of that object. But China, advancing various pretexts, declined Japan's proposal. Thereupon Japan advised Korea to reform her administration so that order and tranquillity might be preserved at home, and so that the country might be able to discharge the responsibilities and duties of an independent state abroad. Korea has already consented to undertake the task. But China has secretly and insidiously endeavoured to circumvent and to thwart Japan's purpose. She has, further, procrastinated and endeavoured to make warlike preparations both on land and at sea. When those preparations were completed, she not only sent large reinforcements to Korea, with a view to the forcible attainment of her ambitious designs, but even carried her arbitrariness and insolence to the extent of opening fire upon Our ships in Korean waters. China's plain object is to make it uncertain where the responsibility resides of preserving peace and order in Korea, and not only to weaken the position of that state in the family of nations—a position obtained for Korea through Japan's efforts—but also to obscure the significance of the treaties recognizing and confirming that position. Such conduct on the part of China is not only a direct injury to the rights and interests of this empire, but also a menace to the permanent peace and tranquillity of the Orient. Judging from her actions, it must be concluded that China, from the beginning, has been bent upon sacrificing peace to the attainment of her sinister object. In this situation, ardent as Our wish is to promote

the prestige of the country abroad by strictly peaceful methods, We find it impossible to avoid a formal declaration of war against China. It is Our earnest wish that, by the loyalty and valour of Our faithful subjects, peace may soon be permanently restored and the glory of the empire be augmented and completed.

Given this 1st day of the eighth month of the 27th year of *Meiji*.

(His Imperial Majesty's sign-manual.)

(Countersignatures of all the ministers of state.)

## II.

### CHINESE PROCLAMATION OF WAR.

*(Translation in the North China Daily News.)*

The Chinese proclamation was couched in the following terms:—

“Korea has been our tributary for the past two hundred years. She has given us tribute all this time, which is a matter known to the world. For the past dozen or so years Korea has been troubled by repeated insurrections, and we in sympathy with our small tributary have as repeatedly sent succour to her aid, eventually placing a resident in her capital to protect Korea's interests. In the 4th moon (May) of this year another rebellion was begun in Korea, and the King repeatedly asked again for aid from us to put down the rebellion. We then ordered Li Hung-Chang to send troops to Korea, and they having barely reached Asan the rebels immediately scattered. But the *Wojên*, without any cause whatever, sent their troops to Korea, and entered Seoul, the capital of Korea, reinforcing themselves constantly until they have exceeded ten thousand men. In the meantime the Japanese forced the Korean king to change his system of government, showing a disposition in every way of bullying the Koreans. It was found a difficult matter to reason with



the Wojên. Although we have been in the habit of assisting our tributaries we have never interfered with their internal government. Japan's treaty with Korea was as one country with another; there is no law for sending large armies to bully a country in this way, and compel it to change its system of government. The various powers are united in condemning the conduct of the Japanese, and can give no reasonable name to the army she now has in Korea. Nor has Japan been amenable to reason, nor would she listen to the exhortation to withdraw her troops and confer amicably upon what should be done in Korea. On the contrary, Japan has shown herself bellicose without regard to appearances, and has been increasing her forces there. Her conduct alarmed the people of Korea as well as our merchants there, and so we sent more troops over to protect them. Judge of our surprise then when, half way to Korea, a number of the Wojên ships suddenly appeared and taking advantage of our unpreparedness opened fire upon our transports at a spot on the sea-coast near Asan, and damaged them, thus causing us to suffer from their treacherous conduct which could not be foretold by us. As Japan had violated the treaties and not observed international laws, and is now running rampant with her false and treacherous actions, commencing hostilities herself, and laying herself open to condemnation by the various powers at large, we therefore desire to make it known to the world that we have always followed the paths of philanthropy and perfect justice throughout the whole complications, while the Wojên on the other hand have broken all the laws of nations and treaties which it passes our patience to bear with. Hence we command Li Hung-Chang to give strict orders to our various armies to hasten with all speed to root the Wojên out of their lairs. He is to send successive armies of valiant men to Korea in order to save the Koreans from the dust of bondage. We also command the Manchu generals, viceroys and governors of the maritime provinces, as well as the commanders-in-chief of the various armies, to prepare for war and to make every effort to fire on the Wojên ships if they come into our ports,

and utterly destroy them. We exhort our generals to refrain from the least laxity in obeying our commands in order to avoid severe punishment at our hands. Let all know this edict as if addressed to themselves individually. Respect this!"

## III.

IMPERIAL ORDINANCE, RELATING TO CHINESE  
SUBJECTS RESIDING IN JAPAN.

We hereby sanction the present regulations relating to Chinese subjects residing in Japan and order the same to be promulgated.

(privy seal.)

(H.I.M.'s sign-manual.)

The 4th day, the 8th month, the 27th year of Meiji.

*Countersigned:* COUNT ITO HIROBUMI,  
*minister president of state.*

COUNT INOUE KAORU,  
*minister of state for home affairs.*

MUTSU MUNEMITSU,  
*minister of state for foreign affairs.*

YOSHIKAWA AKIMASA,  
*minister of state for justice.*

## IMPERIAL ORDINANCE, No. 137.

ART. 1. Chinese subjects are authorized, subject to the provisions of this ordinance, to continue to reside in those places in Japan where they have hitherto been permitted to reside, and there to engage in all peaceful and lawful occupations with due protection of life and property, and subject to the jurisdiction of the Japanese courts.

ART. 2. Chinese subjects residing in Japan in accordance with the preceding article shall, within twenty days after the promulgation of this ordinance, apply to the governor of the

prefecture where they reside to register their residences, occupations, and names.

ART. 3. Certificates of registration will be issued by the governors of prefectures to Chinese subjects who register themselves in pursuance of the preceding article.

ART. 4. Chinese subjects who register themselves according to Art. 2 shall be entitled to change their places of residence provided they obtain from the governor of the prefecture where they are registered, visés upon the certificates of registration, and apply to the governor of the prefecture of their new residence within three days after their arrival to be re-registered as prescribed by Art. 2.

ART. 5. The governors of prefectures may expel from the territories of Japan Chinese subjects who fail to register themselves as required by this ordinance.

ART. 6. Chinese subjects who injure the interests of Japan, commit offences, or disturb order, or are suspected of any of the above acts, shall, in addition to the penalties denounced for such acts, be liable to expulsion by the governors of prefectures from the territories of Japan.

ART. 7. The present ordinance applies to Chinese subjects employed by the Japanese government or subjects.

ART. 8. The present ordinance does not affect the orders or measures of the imperial military authorities which may be issued against Chinese subjects residing in Japan in connection with warlike matters.

ART. 9. Permissions to Chinese subjects to enter the territories of Japan after the promulgation of this ordinance shall be limited to those specially granted by the minister for home affairs through governors of prefectures.

ART. 10. The present ordinance shall be enforced from the date of promulgation.

## IV.

IMPERIAL RESCRIPT RELATING TO  
VOLUNTEER TROOPS.

We, relying on the glorious spirits of Our Imperial Ancestors and the cooperation of Our subjects, and through the instrumentality of Our loyal and gallant land and naval forces, are determined to preserve the dignity and prestige of Our realm. We know that it is on account of their loyalty and patriotism that Our subjects in various localities are undertaking to organize volunteer corps. But, deeming as We do that there are fixed institutions in the country as well as fixed avocations for the people, it is Our desire that except in cases requiring extraordinary recourse to their services Our subjects should continue industriously to pursue their accustomed avocations, so as to promote the industrial development of the realm and to cultivate the national resources. At present We do not deem that there is any need of volunteer troops, and We enjoin local governors to instruct the people concerning Our wishes.

(His Imperial Majesty's sign-manual.)

(privy seal.)

Dated August, 27th of the year of Meiji (Aug. 4th, 1894).

(Countersigned by the ministers of the state.)

## V.

TREATY OF ALLIANCE BETWEEN JAPAN  
AND KOREA.

In view of the fact that on the 25th of July, 1894, the Korean government entrusted His Majesty's envoy extraordinary and minister plenipotentiary at Seoul, Korea, with the expulsion, on their behalf, of Chinese soldiers from Korean territory, the governments of Japan and Korea have been placed in a situation to give mutual assistance both offensive and defensive. Consequently the undersigned plenipotentiaries, duly authorized by their respective governments, with

a view of defining the fact and of securing in the premises concerted action on the part of the two countries, have agreed to the following articles:—

ART. 1. The object of the alliance is to maintain the independence of Korea on a firm footing and to promote the respective interests of both Japan and Korea by expelling Chinese soldiers from Korean territory.

ART. 2. Japan will undertake all warlike operations against China both offensive and defensive, while Korea will undertake to give every possible facility to Japanese soldiers regarding their movements and supply of provisions.

ART. 3. This treaty shall cease and determine at the conclusion of a treaty of peace with China.

In witness whereof the plenipotentiaries of the two countries have signed the treaty and herewith affixed their seals.

Done at Seoul this 26th day of August 1894.

*Signed: KEISUKE OTORI,  
H.I.F.M.'s envoy extraordinary  
and minister plenipotentiary.*

*Signed: KIM IN SHIOKU,  
H.K.M.'s minister of foreign affairs.*

## VI.

### PRIZE COURT LAW.

We hereby give Our sanction to the Prize Court Law and order the same to be promulgated.

(His Imperial Majesty's sign-manual.)

(privy seal.)

Dated August 20th of the 27th year of Meiji.

*Countersigned: COUNT ITO HIROBUMI,  
minister president of state.  
COUNT SAIGO TSUKUMICHI,  
minister of the navy.  
MUTSU MUNEMITSU,  
minister of foreign affairs.*

## IMPERIAL ORDINANCE, NO. 149.

## PRIZE COURT LAW.

## CHAPTER I.

Organization and competence of the prize court and higher prize court.

ART. 1. A prize affair shall be judged in the first instance in a prize court and in the second instance in the higher prize court.

ART. 2. In a prize court one chief judge and six assistant judges shall be appointed.

The chief judge shall be a judge of a court of appeal.

Of the assistant judges one shall be a naval officer, one a councillor of the legislative bureau and one a councillor of the secretary of the foreign department.

ART. 3. In the higher prize court one chief judge and eight assistant judges shall be appointed.

The chief judge shall be a privy councillor.

Of the assistant judges one shall be a privy councillor, two admirals, three judges of the supreme court, one the head of the legislative bureau and one the head of the political bureau of the foreign department.

ART. 4. The chief judges of the prize court and of the higher prize court shall superintend the affairs of the respective courts. When incapacitated from the discharge of their official duties they shall appoint assistant judges of the respective courts to take their places.

ART. 5. Two procurators shall be appointed both in a prize court and in the higher prize court.

The procurators of the prize court shall be public procurators and those of the higher prize court shall be the higher executive officials.

ART. 6. The chief judges, assistant judges and procurators of a prize court shall be appointed by the minister president of state with the sanction of the emperor.

ART. 7. Clerks shall be appointed in a prize court and in the higher prize court. Clerks shall be of *hannin* rank and shall be appointed by the heads of the respective courts.

ART. 8. For the judgment of a prize court the joint determination of not less than five members, of whom the chief judge shall be one, shall be required, while for that of the higher prize court that of the chief judge and not less than six of the assistant judges shall be required.

ART. 9. The opening and the closing of a prize court shall be determined by express imperial ordinance.

## CHAPTER II.

ART. 10. The commander of a war ship that has captured a prize shall take the vessel to the harbour where a prize court is situated, or shall make one of his officers take charge of the prize and take it to that harbour, where a written statement bearing on the case shall be forwarded at once to the court.

In the written statement the cause of the capture and any other facts tending to legalize the proceedings shall be set forth, and books and documents received from the captain or crew of the ship discovered in it shall be forwarded at the same time.

ART. 11. When the chief judge of a prize court has received the written statement described in the preceding article, one of the assistant judges shall be appointed to take charge of the particular case.

The judge commissioned to take charge of the particular case shall proceed at once to open the documents in the presence of the commander or his deputy and the captain of the captured vessel.

ART. 12. The judge commissioned to take charge of the particular case shall proceed to hear the statements which the captain and the crew of the captured ship have to make, and when thought necessary the statements of the vessel that has effected the capture and those of the passengers of the

captured ship. Notes of these statements shall be made by the clerks.

ART. 13. In case the commissioned judge has completed investigations necessary to decide whether the captured vessel and (or) cargo are a lawful prize or must be set at liberty, he shall embody the result of his investigations in documents, and, together with the written statement mentioned in Art. 10 and the documents accompanying it, shall forward them to the procurators of the prize court.

ART. 14. The procurators shall draw up documents embodying their views on the judgment and shall forward them to the court, together with the documents sent in connection with the case.

In case the procurators deem it necessary in drawing up documents embodying their views, they may ask the commissioned judge to carry out further inquiries into certain specified points.

ART. 15. In case the procurators urge in their documents the instant liberation of the captured vessel and (or) cargo and this is deemed proper by the court, the latter should draw up a decision for instant liberation, and shall forward it to the procurators.

ART. 16. In case the procurators urge that the capture should be adjudged a prize, or in case the court deems the instant liberation as urged in the procurators' documents improper, the court shall proceed to make a public announcement.

The announcement shall be published in the official gazette, in which shall be notified that any one who deems that his interests would be affected by the captured vessel being adjudged a prize may send in a written petition within 30 days computed from the next day after the announcement.

In case no petitioner appears within the prescribed time the court shall at once proceed with its enquiry.

In case the procurators have no further representations to submit, the court shall, without further enquiry, give judgment at once, and the document embodying it shall be forwarded to the procurators.



ART. 17. In a petition, the principal points bearing on the case shall be set forth and any documents bearing on the case shall be forwarded at the same time.

ART. 18. In case a petition has been submitted within the period of time specified in Art. 16 an oral examination shall be held at an appointed time, when the procurators and the petitioner shall state their views. The petitioner may be represented by a barrister of the empire.

When the oral examination is concluded, the judgment shall either be given at once or at a certain specified time. If a petitioner fails to appear judgment shall be given at once.

ART. 19. In case the court deems it necessary to re-examine the witnesses before the judgment is arrived at, the commissioned judge may be ordered to do this.

The procurators or a petitioner may forward fresh facts or testimonies before the judgment is given.

ART. 20. Besides the foregoing provisions given in the preceding articles, a prize court shall have power to determine rules relating to the process of examination and judgment.

ART. 21. The procurators or a petitioner may appeal to the higher prize court against the judgment of a prize court.

ART. 22. The period of appeal shall be limited to twenty days computed from the day after that on which the judgment has been awarded.

ART. 23. An appeal shall be made by filing a document in a prize court. In the document the principal points for appeal and the grounds for the appeal shall be given in detail.

To the document of a petitioner the signature of a barrister of the empire should be affixed.

ART. 24. Of the procurators' document of appeal a copy shall be prepared by the court to be shown to the petitioner, and *vice versa* the appeal document of the petitioner shall be shown to the procurators, and shall be filed within the space of ten days. To the reply of a petitioner the signature of a barrister of the empire should be affixed.

ART. 25. When the period for filing a reply has expired the court shall transfer the documents pertaining to the appeal to the higher prize court.

In case the higher prize court deems it necessary to renew the inquiry into facts or testimonies, it shall return the documents specified above to the prize court and shall cause it to carry out the inquiry.

The prize court shall cause the commissioned judge to carry out the specified inquiry, and the documents embodying the renewed inquiry shall be shown to the procurators and the petitioner before they are submitted to the higher prize court.

ART. 26. The higher prize court shall undertake judgment upon the documents.

ART. 27. Additional rules pertaining to the process of examination and judgment of the higher prize court shall be determined by that court.

ART. 28. Articles adjudged prizes shall belong to the state.

ART. 29. Ships and other articles captured shall, till the judgment has been given, be placed under the care of naval officers to be determined by the navy.

ART. 30. Judgment shall be carried into effect by the procurators of a prize court. With respect to the enforcement of judgment, the procurators of a prize court may seek the aid of naval officers and may employ police officials.

ART. 31. Even in cases where, owing to special circumstances, the seizure of a ship has not been effected, the present provisions shall be applied within the scope where they are deemed applicable.

#### APPENDIX.

ART. 32. The present regulations shall be enforced from the date of promulgation.

## VII.

## PRIZE LAW OF JAPAN.

## CHAPTER I.

ART. 1. Imperial Japanese men-of-war can stop and detain an enemy's vessels or suspected vessels. (See Art. 6.)

ART. 2. The following vessels will be detained as hostile :

- (1) Any vessel in the service of the enemy's government as a transport, even though her employment is the result of duresse.
- (2) Any vessel sailing under the flag and pass of the enemy's government.
- (3) Any vessel sailing under a licence of the enemy's government.
- (4) Any vessel, whatever may be her nationality, sailing under an enemy's convoy.
- (5) Any vessel, though by papers appearing to be a Japanese, allied or neutral vessel, owned in whole or in part by an enemy.
- (6) Any vessel apparently owned by a Japanese, allied or neutral subject, if such person has acquired the ownership by a transfer from an enemy made after the vessel had started upon the voyage during which she is met with, but has not yet actually taken possession of her.
- (7) Any vessel apparently owned by a Japanese, allied or neutral subject, if such person has acquired the ownership by a transfer from an enemy made at any time during the war, or previous to the war, but in contemplation of its breaking out, unless there is satisfactory proof that the transfer was *bona fide* and complete.

ART. 3. The following enemy's vessels are exempt from detention :

- (1) Boats engaged in coast fisheries.

- (2) Ships engaged exclusively on a voyage of scientific discovery, philanthropy or religious mission.
- (3) Vessels actually engaged in cartel service, and this even when they actually have prisoners on board.
- (4) Boats belonging to lighthouses.

ART. 4. Ships belonging to neutrals or the subjects of neutrals, except those which are contained in Arts. 5 and 6, should be exempt from detention.

ART. 5. The following vessels, whatever may be the nationality, are to be detained :

- (1) Any vessel which has contraband on board and whose destination is hostile. A destination should be considered hostile if either the port to which a vessel is bound, or any intermediate port at which she is to call in the course of her voyage be hostile, or if in any part of her voyage she is to go to the enemy's fleet at sea.
- (2) Any vessel which attempts resistance to visit by violence.

ART. 6. Any vessel, whatever may be her nationality, is liable to detention as a suspected vessel on account of any one of the following grounds :

- (1) If any vessel carries false or simulated ship's papers.
- (2) If she carries no ship's papers, or if the master or the crew of that vessel have been guilty of spoliation of papers.
- (3) If she has wilfully evaded visit and attempted to escape.
- (4) If she attempted to resist search, by violence.
- (5) If the most important of her ship's papers that should be on board are not forthcoming.

ART. 7. The following vessels and goods should be detained as lawful prize :

- (1) Enemy's vessels.  
Enemy's goods on board enemy's vessels (neutral goods on board enemy's vessels, other than contraband goods, to be exempt).

- (2) Contraband goods.
- (3) Vessels carrying contraband despatches or contraband persons.
- (4) Any vessel which attempted to resist a visit.
- (5) Any vessel which has been detained as a suspected vessel and could give no explanation.

ART. 8. By the term "contraband persons" is meant soldiers, sailors and all other persons in the military service of the enemy.

ART. 9. By the term "contraband despatches" is meant any official communications in the service of the enemy on the public affairs of their government, except official communications between the enemy's home government and the enemy's ambassador or consul.

ART. 10. Contraband goods are as follows :

- (1) Arms of all kinds, ammunition, dynamite, nitrate of potash and brimstone and all goods fit for purposes of war exclusively.

The above-mentioned goods are contraband when they are on board a vessel which either has a hostile destination or calls at any port of the enemy.

- (2) Provisions and liquors.

Money.

Telegraphic materials such as wire, platinum, sulphuric acid and zinc, porous cups.

Materials for the construction of a railway, as iron bars, sleepers etc.

Coals.

Timber.

Etc.

The above-mentioned goods are contraband goods when the destination of the vessel is either the enemy's fleet at sea or a hostile port used exclusively or mainly for naval or military equipment.

When it is clearly known that, though goods detailed in the above sections (1) and (2) are found on board a vessel, they are merely for her own use, they cannot be deemed contraband goods.

ART. 11. The powers of visit, search or detention, cannot be exercised in the territorial waters of a neutral state.

ART. 12. In exercising the rights of visit and search the commander should adhere to the following rules :

- (1) The commander should not exercise the right of visit over any vessel when he has reason to believe that she is not liable to detention.
- (2) Stopping should be ordered by signal flags or the fog horn. If the state of the weather renders the above course ineffective, or if the vessel does not obey the order, the commander should give warning by firing successively two blank shots.
- (3) The visiting officer should first examine the ship's papers. If he is satisfied that the vessel is not liable to detention he should immediately quit her.
- (4) If not so satisfied he should proceed to search her, but if, in the course of search, the visiting officer is satisfied that the vessel is not liable to detention the search should immediately be discontinued and he should quit her.
- (5) During the search the visiting officer should accompany the master or his substitute.
- (6) The visiting officer should ask the master or his substitute to open any lockers, stores or boxes. In case of refusal, he will be justified in adopting such coercive measures as the case requires.
- (7) Before quitting the vessel, the visiting officer should enter in the log-book of the vessel a memorandum of the search.
- (8) If the ship's master refuse to allow his ship to be visited and searched, a note of it shall be put in the log-book.

ART. 13. If upon visit and search of the vessel the commander has reason to entertain any suspicion, he should give the master an opportunity of explanation, and if, after such opportunity having been given, he is satisfied that there is proper evidence against her, amounting to probable cause for her detention, he should detain her.

Proper evidence is such as will be admissible before the prize court: viz. (1) facts indicating on inspection the character of the vessel, her equipment, cargo and crew; (2) the papers on board of her; and (3) the testimony of her master and crew.

ART. 14. As soon as the commander has determined to detain the vessel, he should give notice to the master, and state to him the ground on which the detention is made. The commander should then without delay secure possession of the vessel, by sending on board one of his own officers and some of his own crew. If by reason of rough weather or other circumstances this is impracticable, the commander should require the vessel to lower her flag and to steer according to his orders.

ART. 15. Upon obtaining possession of the vessel, the first duty of the commander is to secure all the papers belonging to the vessel, especially those which relate to the vessel and cargo. Those papers, as soon as secured, should be arranged and numbered in consecutive order, care being taken that the enclosures are not separated from their envelopes, and then the affidavit in forms No. 1 and No. 2 should be prepared for their verification.

ART. 16. Upon obtaining possession of the vessel the commander should cause an account to be taken in writing of all money and valuables found on board. This account should be taken in duplicate and duly certified, and one copy given to the master. The certificate should be in Form No. 3.

ART. 17. If, after the detention of the vessel, there should come to the knowledge of the commander any further facts tending to show that the vessel has been improperly detained, he should immediately release her.

ART. 18. After detention, the commander should as soon as possible himself bring the vessel to the port where the prize court is, or the port nearest the prize court.

If the state of things render it necessary, he may order the officer who secured the vessel (Art. 14), or another officer

to embark on board and bring the vessel to the above-named port.

ART. 19. If the quantity of provisions, the state of the weather, or other circumstances render it necessary, the commander may call at the nearest port. When the circumstances admit, he should as soon as possible go to the port stated in Art. 18.

ART. 20. When the commander finds that the detained vessel is unfit to be sent to the port stated in Art. 18, or when the commander is not able to send a crew to the vessel for the purpose of bringing her to the above-named port, or when he finds the cargo is unfit to be sent to that port, the commander may bring the vessel to the nearest port to where he is, and may act as the state of things permits him.

In this case the commander should cause a survey thereof to be made by the officers of his ship the best qualified for the duty, and the surveying officers should report in writing the details of the matter to the commander, and the commander should forward the report to the prize court.

When the commander causes the cargo to be sold, the affidavit may be in form No. 4. In other cases, in which the detained vessel is brought to the nearest port, the affidavit may be in form No. 5.

In the above-mentioned case, if the vessel is not an enemy's vessel, the commander should release the vessel after confiscation of the contraband goods.

ART. 21. The sale may be made in any neutral port where the local authorities may be willing to allow the sale to take place.

ART. 22. If the enemy's vessels are unfit to be sent to a port as stated in Art. 18, the commander should break up the vessels, after taking the crew, the ship's papers and the cargo if possible into his ship. The crew, the ship's papers and the cargo should be sent to a port as stated in Art. 18.

ART. 23. When a commander of a neutral convoy



declares that there is no contraband on board the vessels under the convoy, and that all the papers are in order in these vessels, the vessels should not be visited.

ART. 24. Regarding the supply of the crew of the detained ship, the minister of the naval department will give special instructions.

ART. 25. The commander who makes the capture should forward the reports to the admiral-in-chief and the naval minister.

## CHAPTER II.

ART. 26. The following are ship's papers :

- (1) The certificate of registry—is a document signed by the register of the port to which the vessel belongs, and usually specifies *inter alia* the name of the vessel and of the port to which she belongs: her tonnage, etc.: the name of her master: particulars as to her origin: the names and descriptions of her registered owners.
- (2) The passport—purports to be a requisition on the part of a sovereign power or state to suffer the vessel to pass freely with her company, passengers, goods and merchandise, without any hindrance, seizure or molestation, as being owned by citizens or subjects of such state. It usually contains the name and residence of the master, the name, description and destination of the vessel.
- (3) The sea-letter, or sea-brief—is issued by the civil authorities of the port from which the vessel is fitted out: it is the document which entitles the master to sail under the flag and pass of the nation to which he belongs: and it also specifies the nature and quantity of the cargo, its ownership and destination.
- (4) The charter-party—is the written contract by which a vessel is let, in whole or in part: the person hiring, being called the charterer. It is executed by the owner or master, and by the charterer. It usually

specifies (amongst other things) the name of the master, the name and description of the vessel, the port where she was lying at the time of the charter, the name and residence of the charterer, the character of the cargo to be put on board, the port of lading, the port of delivery, and the freight which is to be paid.

- (5) The official log-book—is the log-book which the master is compelled to keep in the form prescribed by the municipal law of the country to which the vessel belongs.
- (6) The ship's log—is the log kept by the master for the information of the owners of the vessel.
- (7) The builder's contract—is to be expected on board a vessel which has not changed hands since she was built. It is not a necessary document; but it sometimes serves in the absence of the pass, or sea-letter, or certificate of registry, to verify the nationality of a vessel.
- (8) The bill of sale—is the instrument by which a vessel is transferred to a purchaser.
- (9) Bills of lading—usually accompany each lot of goods. A bill of lading on board a vessel is a duplicate of the document given by the master to the shipper of goods on occasion of the shipment. It specifies the name of the shipper, the date and place of the shipment, the name and destination of the vessel, the description, quantity and destination of the goods, and the freight which is to be paid.
- (10) The invoices—should always accompany the cargo. They contain the particulars and prices of each parcel of goods with the amount of the freight, duties and other charges thereon, and specify the name and address of the shippers and consignees.
- (11) The manifest—is a list of the vessel's cargo, containing the mark and number of each separate package, the name of the shippers and consignees: a specification of the quantity of the goods contained in

each package: and also an account of the freight corresponding with the bill of lading. The manifest is usually signed by the ship-broker who clears the vessel out at the custom-house and by the master.

- (12) The clearance—is the certificate of the custom-house authorities of the last port from which the vessel came, to show that the custom-duties have been paid. The clearance specifies the cargo, and its destination.
- (13) The muster roll—contains the name, age, place of residence, and place of birth of every person of the vessel's company.
- (14) Shipping articles—are the agreement for the hiring of seamen. They should be signed by every seaman on board and should describe accurately the voyage and the term for which each seaman ships.
- (15) Bill of health—is a certificate that the vessel comes from a place where no contagious disease prevails, and that none of her crew at the time of her departure were infected with such disease.

The ship's papers on board a vessel vary according to her nationality.

### CHAPTER III.

#### BLOCKADE.

ART. 27. A blockade is effective when it is maintained by one or more warships, sufficient really to prevent access to the coast of the enemy, or at any rate to create evident danger to ships attempting ingress or egress.

ART. 28. A commander authorized to institute a blockade should at once communicate his declaration to the consuls of all the states residing at the port he is blockading; and at the same time he should give notice to all the ships in the port to withdraw from it within a certain fixed time.

ART. 29. Any vessel, whatever may be the nationality, should be detained when she is guilty of a breach of blockade.

In this case the vessel is deemed a lawful prize.

ART. 30. Notice of blockade is either actual or constructive.

(1) Actual notice.

The master will be held to have had actual notice if he is shown to have had knowledge of the blockade, in whatever way he may have acquired such knowledge, whether by direct warning from one of H.I.J.M.'s ships or from any other source of information.

(2) Constructive notice.

The master of a vessel will be presumed to have received notice of a blockade if a notification of its existence has been made to the proper authorities of the state to which the vessel belongs, and sufficient time has elapsed for such authorities to communicate the notification to the subjects of that nation whether or not they have in fact communicated it.

ART. 31. A vessel should not be detained only for the reason that a blockaded destination is found in her clearance.

ART. 32. The mode of detaining a blockade-runner should be the same as that mentioned in Chap. I.

### FORMS.

**No. 1** (referred to in Art. 15). Affidavit as to ship's papers on board at the time of capture, and delivered up.

The —, — master.

I, the undersigned A. B. —, holding the rank of — in His Imperial Majesty's Navy, and belonging to His Imperial Majesty's Ship — certify as follows :

(1) I was present at the capture of the above-named vessel, the — whereof — was master, by His Imperial Majesty's said Ship, the —, on the — day of — 1894.

(2) The papers hereunto annexed, and marked No. 1. to No. — inclusive, are all the papers which were on board at the time of the capture of the said vessel and were delivered up.

(3) The said papers are now in the very same plight, save the numbering thereof, as when the same were delivered up.

Signed A. B.

on the day — of — 1894.

**No. 2** (referred to in Art. 15). Affidavit as to ship's papers thrown overboard or destroyed at the time of the capture.

The —, — master.

I, the undersigned A. B. — holding the rank of — in His Imperial Majesty's Navy and belonging to His Imperial Majesty's Ship — certify as follows :

(1) I was present at the capture of the above-named vessel, the —, whereof — was master, by His Imperial Majesty's said Ship, the —, on the — day of — 1894.

(2) A few minutes before the capture aforesaid, I saw two packets of papers thrown from one of the port-holes of the said vessel ; the cutter was immediately lowered ; one of such packets sunk and lost, but the cutter's crew succeeded in saving the other packet.

(3) The papers hereunto annexed, and marked No. 1 to No. — inclusive, are all the papers so saved, and are now in the very same plight, save the numbering thereof, as when they were so saved.

A. B.

Signed by the said A. B.

**No. 3** (referred to in Art. 16). Certificate, to be made by the commander, as to money and valuables found on board the prize, a copy of which must in all cases be delivered to the master.

The —, — master.

I, the undersigned —, holding the rank of — in His Imperial Majesty's Navy, and commanding His Imperial Majesty's Ship —, do hereby certify that the following is a correct account of all moneys and valuables found on board

the — vessel, detained by me, as lawful prize of war, on  
the — day of — 1894.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ State whether  
voluntarily given  
up or found  
concealed.

Signed this — day of — 1894.

\_\_\_\_\_  
\_\_\_\_\_  
Commanding His Imperial Majesty's Ship.

Note.—I do hereby declare that on the — day of —  
1894, I delivered a copy, signed by myself, of the above  
certificate to the master of the —, and that

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ State whether  
master made  
objection.

Signed this — day of — 1894.

\_\_\_\_\_  
\_\_\_\_\_  
Commanding His Imperial Majesty's Ship —.

**No. 4** (referred to in Art. 20). Affidavit by prize  
officer as to sale of cargo.

The —, — master.

I, the undersigned A. B. — holding the rank of — in  
His Imperial Majesty's Navy, and belonging to His Imperial  
Majesty's Ship — certify as follows :

(1) On the — day of — 1894, Captain — the  
commander of the said ship — captured the said vessel  
the —, in latitude — and in longitude —, and detained  
her as lawful prize of war.

(2) On the — day of — 1894, the said captain —  
ordered a survey to be made of the cargo on the prize.

(3) The paper marked A. and annexed to this affidavit,  
is the report made by the officers appointed to make the said  
survey.

(4) In conséquence of this report, Captain — ordered me to navigate the prize in the first instance to the port of —, and there to sell the cargo by public auction.

(5) On or about — day of — 1894, I arrived in charge of the cargo at the said port of —, and I forthwith directed the cargo to be appraised by C. D. and E. F. of —, being the most competent persons I could find for the purpose.

(6) Previous to making the appraisement, the said C. D. and E. F. were sworn to be impartial, and the paper marked B. and annexed hereto is the affidavit so sworn by them.

(7) The paper marked C. and annexed hereto is the appraisement made by the said C. D. and E. F.

(8) On or about the — day of — I ordered a sale to be made of the cargo by public auction at —. The paper marked D. and annexed hereto is the advertisement of the said auction in —.

(9) On the — day of —, the sale as advertised took place. I was present thereat, and saw the cargo sold.

(10) The paper marked E. and annexed hereto is the account sale of the said cargo, delivered to me by the said —, showing a net balance upon the sale of the said cargo to the amount of *Yen* —.

(11) On the — day of — 1894, I transmitted the said sum of yen — to —.

A. B.

Signed by the said A. B. at  
— on the — day of — 1894.

**No. 5** (referred to in Art. 20). Affidavit by prize officer as to sending the prize into the nearest port pending adjudication.

The —, — master.

I, the undersigned A. B. —, holding the rank of — in His Imperial Majesty's Ship — certify as follows:

(1) On the — day of — 1894, Captain —, the commander of the said ship, captured the said vessel, the

—, in latitude — and longitude —, and detained her as lawful prize of war.

(2) On the — day of — 1894, the said Captain — ordered a survey to be made of the prize.

(3) The paper marked A. and annexed to this affidavit is the report of the officers appointed to make the said survey.

(4) In consequence of the said report, Captain — ordered me to navigate the prize to the port of —.

(5) In obedience to the said order, I navigated the prize to the said port of —, and arrived there on the — day of — 1894, and forthwith delivered the prize to —

A. B.

Signed by the said A. B.

**No. 6** (referred to in Art. 28). Declaration of Blockade.

I hereby declare that on the — day of — last the —, from —, in latitude —, longitude —, to — in latitude —, longitude —, were placed in a state of blockade by a competent force of His Majesty's Ships, and are now in such state of blockade; and that all measures authorized by the law of nations and the respective treaties between His Imperial Majesty and the different neutral powers will be enforced on behalf of His Majesty against all vessels which may attempt to violate the blockade.

Given on board His Imperial  
Majesty's Ship at —,  
this — day of — 1894.

Signed

Commander of His Imperial  
Japanese Majesty's Naval Force  
in —.



## VIII.

THE REPORT RELATING TO THE  
KOW-SHING AFFAIR.

To His Excellency Mr Mutsu Munemitsu, Minister for Foreign Affairs.

Dear Sir:

Carrying with me your instruction to investigate the important facts relating to the transport ship of the Chinese troops, as well as her complement, which was sunk by H.I.J.M.'s war vessel *Naniwa* near Sho-pai-oul Island off the coast of Korea, I left Tokyo on the 29th ultimo and travelling day and night arrived at Sasebo at 5 a.m. on the 2nd instant, and at once proceeded to make the necessary investigations. Although the essential points that I have obtained by these investigations have been already telegraphed to you from time to time, I hereby submit this paper to you in order to report more details in a consecutive form.

The material used for my investigations are as follows:

1.—The statements of the captain, first officer, and a quartermaster of the sunken ship (the important points of these statements were written and signed by the narrators).

2.—The written answers by the above-mentioned captain and officer to a series of questions put to them by the naval authorities of the Sasebo naval station.

3.—The reports sent by the commanders of H.I.J.M.'s men-of-war relating to the naval engagement near Fernand Island off the Korea coast and the other matters connected with it.

4.—The statements of the commander of H.I.J.M.'s war vessel *Yayeyama* who brought the above-said captain and two others as well as the complement of the captured Chinese war vessel *Sow-Kow* (*Tsaokiang*) to Sasebo.

5.—The statement of Mr Mühlenstedt, a Dane, who was on board the above-said Chinese war vessel (the important

points of these statements were written and signed by the narrator).

6.—The written answers of the commander of the said Chinese war vessel to a series of questions put to him by the naval authorities of the Sasebo naval station.

The name of the sunken ship is *Kow-shing*, her owners are the Indo-China Steamship Navigation Co., London, whose agents are Jardine, Matheson and Co., and her nationality is British.

She was built in 1883, her net tonnage was 1354, her gross tonnage 2134.

As to other particulars of the ship, I omit them here as they are all described in Lloyd's register.

Her complement was as follows :

Captain, Thomas Ryder Galsworthy.

First-officer, Lewis Henry Tamplin.

Second-officer, Joseph Welsh.

Third-officer, Nathaniel Wake.

First-engineer, William Gordon.

Second-engineer, W. L. Halley.

Third-engineer, J. Primrose.

(The above, British.)

Quartermaster, Lucas Evangelista.

„ Gregorio Altilar.

„ Pedro Oriaote.

„ Donicio.

(The above, Manila men.)

And a crew of 64 persons.

The ship had on board one thousand and one hundred Chinese troops, including generals, both artillery and infantry, together with a large number of guns and a great quantity of ammunition. There was on board one Herr von Hanneken who professed to be a passenger. Excepting these there was no cargo or passenger, the ship carrying water-ballast.

The ship was chartered by the Chinese government, although the date of the charter-party has not been ascertained. The captain received his first order from the agent at Shang-hai, and proceeded to Taku, and having

received the second order at that place and having taken on board there the Chinese troops and Herr von Hanneken proceeded for Asan in Korea. The object of her voyage was to disembark at Asan the Chinese troops and Herr von Hanneken. The captain was also instructed that he was to return to Taku after the successful disembarkation of the troops.

The survivors of the complement of the *Kow-shing* conveyed to Sasebo are the captain, first officer and quartermaster, three in all. The *Kow-shing* left Taku at 9.50 p.m. on the 23rd ultimo.

According to what the captain says, eight transports carrying Chinese troops left Taku with sealed orders two days previous, i.e. on the 21st, and another left on the 22nd and proceeded to Asan.

According to what the first officer of the *Kow-shing* states, three of those ten ships were British, seven were Chinese.

Although I have good grounds for believing that the *Kow-shing* was also furnished with a sealed order at the time of her departure, yet I reserve the source of this information at present. The statement that many transports with Chinese troops left Taku on the 21st and 22nd coincides with the intelligence obtained by our authorities, and although their destination is not clearly known, according to the report of the commander of the *Yayeyama* to me one of those transports was seen by H.I.J.M.'s war-vessel *Musashi* entering the gulf of Asan on the day preceding the naval engagement near Fernand Island. That ship may be the one that left Taku on the 22nd.

The *Kow-shing* proceeded to the neighbourhood of the Sho-pai-oul Island early on the morning of the 25th ultimo, and the *Sow-Kow* (*Tsaokiang*) also approached the same island, a short distance on her right-hand side. The naval engagement between two Chinese war-vessels *Saiyen* (*Chee-yuen*) and *Kow-Otsu* (*Kwang-i*) and three of our men-of-war *Akitsusu*, *Yoshino* and *Naniwa* took place from 7.5 to 8.15 that morning.

The *Saiyen* passed by the *Kow-shing* at about 8.30 and

hurriedly proceeded westward. The *Kow-shing* dipped her ensign but no notice was taken by the *Saiyen*. Immediately afterwards, the three Japanese men-of-war appeared on the scene. They were in pursuit of the *Saiyen*. When the *Kow-shing* was seen, one of the Japanese war-vessels turned her bow toward the *Kow-shing*. The *Sow-Kow* (*Tsaokiang*) observing all these ships, suddenly changed her course and ran westward. Two of the Japanese war-vessels proceeded in pursuit of the *Saiyen* and *Sow-Kow*. Fortunately the *Sow-Kow* was overtaken by the *Akitsusu* at about 2 p.m., and finally captured. The *Saiyen* which was at first steering round very closely along the island, apparently trying to conceal herself as much as possible from the sight of the Japanese vessels, suddenly changed her course, and crossing the course of the *Sow-Kow* at an extremely short distance from her, made a rapid run south-westward. Her direction was apparently Shan-tung Promontory. She escaped at last. If she proceeded direct to Tien-tsin, she must have changed her direction in the course of her run.

Our vessel that went towards the *Kow-shing* was the *Naniwa*. It was about 9 o'clock when they approached each other. As to what then took place between these two vessels, I will give subsequently the captain's own words, extracted from his written answer in reply to the questions of the naval authorities. The statements of the first officer and the quartermaster also entirely agree with that of the captain, which was as follows.

"When nearing Sho-pai-oul Island I was ordered by H.I.J.M.'s *Naniwa* to stop, and shortly after to anchor, which I did. The *Naniwa* then steamed away evidently for the purpose of conferring with some other Japanese warship. I asked by signal if I was to proceed, the *Naniwa* answering 'heave to or take the consequences' and shortly afterwards a boat was sent from her, the officer in charge coming on board the *Kow-shing*; they asked to see my ship's papers which I showed them, and also asked me several questions which I answered. They then asked me if we would follow the *Naniwa*. I said 'yes,' that I was

powerless to refuse, as their vessel was a man-of-war; the officers then returned to the ship and shortly afterwards I was ordered to 'slip or weigh immediately,' but this the Chinese generals on board would not let me do, telling me that if I attempted to follow the *Naniwa* or to leave the ship, they would execute or shoot me, pointing me out to their men, who were told off to watch me, they being either armed with large swords or rifles with fixed bayonets. I then signalled to the *Naniwa* 'send a boat, I wish to communicate personally.' When the boat arrived, the Chinese officers would not allow me to go to the gang-way to meet the Japanese officers at first, but when they did allow me I asked the officers to tell their captain that I was not allowed to follow the *Naniwa* by the Chinese and that the only terms I could make with them were to take the ship back to Taku, also that we were a British ship and had left port before war was declared.

Shortly after the boat returned to the *Naniwa*, the latter signalled 'quit the ship immediately.' I answered 'we are not allowed' and 'send a boat.' The *Naniwa* then signalled 'boat cannot come,' and shortly afterwards hoisted a red flag at the fore, sent a torpedo at and opened fire on the *Kow-shing*, and sank her."

With regard to the resistance of the Chinese generals to the captain's intention I obtained from him further particulars and I am convinced that the generals were determined to resist *à mort* the orders of the *Naniwa*. The written statement of the captain relating thereto is as follows:

"When the Chinese generals heard that I intended to follow the *Naniwa* they objected to my doing so, saying that they would not allow me to follow the Japanese ship. I then told them that it was useless to resist as one shot from the *Naniwa* would sink the *Kow-shing*. They said then that they would rather die than follow her and that they had 1100 men and the *Naniwa* had only about 400; that they could fight the *Naniwa*. I again told them of the foolishness of this idea, also that if they wanted to fight, then I and the officers and engineers would go on shore. They then threatened me, making many gesticulations, that they would

execute me or shoot me if I made any attempt whatever to leave the ship or follow the *Naniwa*." (See No. 2.)

The time when the *Kow-shing* was fired at was about 40 minutes past noon, i.e. nearly four hours from the moment when she was first ordered to stop by the *Naniwa*. Thus we can see that the *Naniwa* had used every ordinary means before she at last appealed to the extreme measure of firing. The report that many Chinese transports left Taku on the 21st and 22nd was already known to all our men-of-war there, and from the geography of the place round the Sho-pai-oul Island, it must have been most uncertain for our ships when and whence any ship of the enemy might come and attack them from behind, so many islands being scattered around. Moreover two companions of the *Naniwa* were in search of their enemy, and it must have been also very uncertain to the *Naniwa* what kind of severe fighting those two were engaged in with their enemy. At such a critical moment, so long a time as mentioned above was spent in negotiation between the *Kow-shing* and the *Naniwa* simply because the *Kow-shing* happened to display the national flag of England.

This will be quite sufficient to show what kind of deliberate care was taken by the *Naniwa*, and also what amount of untiring patience she must have exercised.

Beside this, the clamour and excitement of the Chinese soldiers on board the *Kow-shing* was actually seen from the *Naniwa*; it must have been quite impossible on her part to try to capture the *Kow-shing* by any common and ordinary measures.

This fact is also plain from the statements of the captain and others on board the *Kow-shing* (See Nos. 3 and 4). Thus you will see that the firing of the *Naniwa* was a measure quite unavoidable.

At the time when the *Naniwa* signalled 'quit the ship' and warned the *Kow-shing* of danger by hoisting a red flag, the captain of the latter vessel and his officers and others jumped overboard one after another. At that moment, the captain had already collected his officers on the bridge and

the emergency was already communicated to the engine department. When the Chinese troops saw the captain and others jump overboard, they at once poured down their rifle bullets indiscriminately upon those in the water. While these things were going on in the *Kow-shing* the *Naniwa* sent a torpedo against the *Kow-shing* first, and when it missed her fired side-guns which sealed the fate of the *Kow-shing* which gradually sank beneath the waves; and on the other hand, she despatched her boats and did her best in rescuing as many foreigners as possible. But alas! only three were saved, that is the captain, first officer and a quartermaster as stated above. The captain and the first officer were fortunately unhurt, but the quartermaster was shot through his neck and is still under medical treatment at the hospital in Sasebo. As to the remaining members of the crew their fate is still unknown, but it is most probable that they were mostly killed by the bullets poured down upon them by the Chinese soldiers. This is to be surmised even from the statements of the captain and others (see Nos. 5, 6 and 7). I have already stated that there was one von Hanneken on board the *Kow-shing*. He is said to have professed to be a passenger, but it seems to me very strange that he alone was there while there was not a single passenger besides him. I therefore closely questioned and succeeded in obtaining the written statements (No. 8, 9 and 10) from the captain and two others.

After deliberating in my mind, and comparing these statements with other information which had come into my possession from other sources, I became convinced in my belief that he had more than ordinary connection with the Chinese government or troops, and that he should not be considered as a mere ordinary passenger. I heard a report while in Sasebo that a German from the *Kow-shing* had boarded a German war-vessel. He must be von Hanneken.

The captain and two others were sent to Sasebo on board H.I.J.M.'s *Yayeyama* together with the complement etc. of the captured Chinese war-vessel *Sow-Kow* (*Tsaokiang*), and arrived at Sasebo on the 28th ultimo. With regard to their

personal treatment, nothing but kindness and courtesy were shown to them from the time of their rescue onward.

With regard to the relation between the Chinese government and the owner of the *Kow-shing*, although I am unable to obtain the details, I have good ground, taking into consideration several surrounding circumstances, in believing that the late affair, i.e. the *Kow-shing's* transporting Chinese troops, has more meaning than business coming to the company in the ordinary course of traffic.

Even from the written statement of the captain which was obtained in answer to my close questioning, it is plain that the ship was chartered by the Chinese government, and that it was mentioned in the charter-party that the ship was to be handed over to the Chinese government should hostilities commence, also the European crew was then to leave the ship (see No. 11).

The mode of my making investigations personally through the captain and two others was thus :

I first explained to them the object of my mission to Sasebo, and in the next place, as I had to put several questions to them and cause their statements to be written and signed as far as essential points are concerned, I asked them if they had any ground of objection to my questioning or to my writing such a statement. They answered that they had no objection whatever ; whereupon I proceeded with the necessary investigations.

Now that I am writing this report, one thing which is most pleasant to my mind is to inform you of the fact that they all felt greatly the kindness of the officers on board our men-of-war and the staff-officers of the naval station in regard to their personal treatment, for which they expressed the warmest thanks.

My investigations were finished in two days. I asked their wishes and was answered that they wished to be sent to Nagasaki.

Thereupon, in accordance with your instructions and those of the minister of the navy, I consulted with Admiral Shibayama, commander-in-chief of the naval station.



As a result, an intimation was conveyed to them by the admiral early in the morning of the 3rd instant that they would be sent to Nagasaki. The time of departure was fixed by mutual understanding to be at 8 a.m. the next morning, and at the appointed hour the captain and his officer, escorted by a staff-officer of the station, were sent to Nagasaki on board a steamer specially despatched for the purpose. With regard to the quartermaster, he desired to stay a little longer in the naval hospital of Sasebo in order to receive further medical treatment, and it was assented to.

The preceding statements are the material parts of the matters of which I have made investigation relating to the *Kow-shing* affair. All the documents relating to them are put into a different envelope and presented to you together with this paper. It is not within the sphere of my duty here to discuss the merit of the action of the *Naniwa* from the point of view of international law; it is beyond all doubt from all the facts now in our possession that no impartial critic will ever pronounce that her action was wrong.

Your obedient servant,

KENCHŌ SUEMATSU.

*President of the Imperial  
Board of Legislation.*

*August 10th, 1894.*

**No. 1.** Extract from the written statement of the first officer in answer to the questions of the naval authorities of the naval station, Sasebo.

‘I was on watch on the morning of Friday the 25th with the captain and third mate, nearing Sho-pai-oul Island, when we were ordered to stop by signal from a Japanese man-of-war. We immediately stopped and signalled that we had done so. Then we were ordered by signal to anchor and did so. The man-of-war then steamed away to confer with two other ships of H.I.J.M.’s navy. I then was instructed by Captain Galsworthy to enquire by signal if we could proceed, and was answered by the man-of-war “heave to or take consequences.” After a short interval the *Naniwa* returned and sent a boat to

us; the officer in charge examined our papers and returned to the *Naniwa*. A signal was then made from the *Naniwa* to "weigh or slip immediately and follow me." This signal excited the Chinese greatly, and the general emphatically and with many threats (even to ordering an executioner and a soldier with loaded rifle to attend immediately behind myself and the captain) refused to allow the captain to do so.

We then signalled to the *Naniwa* "send a boat, I wish to communicate personally." The *Naniwa* answered "sent immediately," and a boat with some officers came alongside. The Chinese general refused to allow me to be present at the interview, but I understood that the captain asked to be allowed to return to China. The boat returned to the *Naniwa* and the signal was hoisted to "quit the ship." We signalled in return "I am not allowed" and again "send a boat." The latter signal was answered by "lifeboat cannot come." The Chinese were very anxious to know what we were hoisting, and to obtain time to study our position and keep them from firing at us, we told them that we were asking instructions. The *Naniwa* whistled several times and hoisted a red flag at the fore; all our officers were collected on the bridge and word was sent to the engineer's staff to prepare for emergency. A torpedo was discharged from the *Naniwa*, followed by a broadside, which struck amidships. I then jumped overboard to avoid a rush on the part of the Chinese soldiers and was fired at on coming to the surface. I swam to the *Naniwa* and was picked up by a boat from the *Naniwa* which had been sent with another boat to pick up the Europeans.'

(Extract from the same statement in answer to a question running thus: What order did the Chinese generals give at the time?)

'Issuing ammunition and rifles to the men and ordering his body-guard to fire at us if we showed the slightest intention of following the *Naniwa* or leaving the ship in any way.'

**No. 2.** From the written statement of the first officer.

'As a fuller account of the resistance to the order of the

warship *Naniwa* by the Chinese is required, I beg to submit the following :

That the Chinese general, on having the instructions explained to him, distinctly refused to allow us to obey, and when argued with about the folly of his conduct, threatened our lives and placed men to watch us and to fire at us immediately we showed any signs of either obeying the orders of the warship *Naniwa* or of leaving the ship ourselves ; and I was also told by one of the engineers that they had been prevented from going into the engine room.'

**No. 3.** From the written statement of the captain.

'I am quite convinced that if the *Naniwa's* men had come in boats to capture the *Kow-shing* the Chinese soldiers would have fired at them.

I am certain that the bullets that were falling around me in the water were fired by the Chinese soldiers on board, as not only did the position of the *Naniwa* prevent anyone on board her reaching me with a bullet, but I actually saw the Chinese soldiers firing at me.'

**No. 4.** From the written statement of the first officer.

'And I am of the opinion that if the Japanese boats had come again alongside with the intention of taking the vessel, the Chinese troops on board would most certainly have resisted with force.

Also that whilst in the water and swimming from the *Kow-shing* I was fired at by the Chinese on board. This I am certain of, not only from the position I was in regarding the two ships, as the *Naniwa's* shots would have passed over me, but also because I distinctly saw the Chinese soldiers firing from the upper deck and also from the 'tween deck ports.'

**No. 5.** From the written statement of the captain.

'By the number of shots that were fired at me, I should think it very probable that some of my officers and engineers and quartermasters must have been killed by the bullets from the Chinese soldiers' guns.'

**No. 6.** From the written statement of the first officer.

‘I am afraid, from the amount of firing by the Chinese at the Europeans whilst in the water, that some of them must have been killed before reaching the shore.’

**No. 7.** From the written statement of the quarter-master.

‘I looked round but I found neither captain nor any European officers remaining there; I found a deck bucket which I thought was good enough to save my life, so I jumped into the sea with it. At the time, I was fired at by Chinamen from the scuttles with 5 or 6 rifles at a time. I narrowly escaped from being fatally wounded and got my neck pierced through by a shot. I lost my senses for a while, and when I revived I cried out “a Spaniard! a Spaniard! save me! etc,” and presently I was picked up by a boat which turned out to belong to the Japanese man-of-war. When I was picked up men in the boat cried “any more Europeans,” to which I could give no answer, as I was exhausted. I was the first foreigner who was picked up; soon afterwards the captain and then the mate were rescued.’

**No. 8.** From the written statement of the captain.

‘Mr von Hanneken the passenger on board the *Kow-shing* I fancy was a German. He joined the vessel at Taku just before she left. On arriving on board he asked me if I had been waiting for him? I answered no, that I even did not know that he was coming. He then told me his name von Hanneken and that he had the Viceroy’s permission to proceed to Korea in the *Kow-shing*. He had a lot of conversation with the Chinese general and other Chinese officers on board during the voyage, which naturally led me to suspect that he was in some way connected with their business, although he told me that he had nothing to do with them. He acted as interpreter between the Chinese and myself.

Mr von Hanneken was a big man of fine physique. I saw him last after the *Kow-shing* sank, in the water some

good way ahead of me and should fancy that he would reach the Island of Sho-pai-oul.

I first heard of Mr von Hanneken, I think it was in 1887. He was then the head of a firm of contractors who were building a dock at Port Arthur (Lee-Shun-Kaw).'

**No. 9.** From the written statement of the first officer.

'Among the Europeans on board the *Kow-shing* but not belonging to the ship's company was one gentleman, who I believe was a German and apparently a military man from his bearing. He was evidently known to the Chinese officials on board and spoke their language fluently, though he stated that he was only a passenger going to Korea for his own pleasure. On several occasions when I wanted various things done by the soldiers, such as keeping certain parts of the ship clear for our use and other things, I went to him and he always managed to effect the work or thing I required. Also during the period previous to the *Naniwa* opening fire on us he was in close consultation with the Chinese generals.

When I last saw him he was well on his way to Sho-pai-oul Island and swimming powerfully and well. He was apparently a man about 40 years old, above the average height and with dark hair and moustache, with a decided military bearing.'

**No. 10.** From the written statement of the quarter-master.

'There was one passenger on board. I think he was a German. He was in constant conversation with the Chinese officers. I think he was a sort of Chinese general, although there were two other real ones.'

**No. 11.** From the written statement of the captain.

'I understood by the terms of the charter-party that in the event of hostilities taking place between China and Japan the *Kow-shing* was to be taken over by the Chinese government, and also that the European officers were to leave the ship.'

## IX.

## THE TREATY OF ARMISTICE

His Majesty the Emperor of Japan having in view of the untoward event which temporarily interrupted the depending negotiations for peace commanded his plenipotentiaries to consent to a temporary armistice,

The undersigned Count Ito Hirobumi, Junii, grand cross of the imperial order of Paullownia, minister president of state, and Viscount Mutsu Munemitsu, Junii, first class of the imperial order of the Sacred Treasure, minister of state for foreign affairs, the plenipotentiaries of His Majesty the Emperor of Japan; and Li Hung-Chang, plenipotentiary of His Majesty the Emperor of China, senior tutor to the Heir Apparent, senior grand secretary of state, minister superintendent of trade for the northern ports of China, viceroy of the province of Chihli and earl of the first rank, have concluded the following treaty of armistice.

ART. 1. The Imperial governments of Japan and China agree to enforce an armistice between their respective military and naval forces in the province of Fêng-tien, Chihli and Shan-tung subject to the provisions contained in the following articles:

ART. 2. The forces affected by this armistice shall have the right to maintain the positions respectively occupied by them at the time hostilities are actually suspended, but they shall not under any circumstances during the existence of this armistice advance beyond such positions.

ART. 3. The two governments engage during the existence of this treaty not to extend, perfect or advance their attacking works or to re-inforce or in anywise to strengthen either for offensive or defensive operations their confronting military line. But this engagement shall not prevent either government from making any new distribution or arrangement of troops not intended to augment or strengthen the armies now actually in the field and engaged in active military operations.

ART. 4. The movement of troops and the transportation

of military supplies and all other contraband of war by sea shall be subject to the ordinary rules of war and shall consequently be liable to hostile capture.

ART. 5. This armistice shall be enforced by the imperial governments of Japan and China for the period of 21 days from the date of the signature of this treaty.

In those localities occupied by the troops of the two governments to which there is no telegraphic communication the quickest possible means shall be employed in issuing the orders for the armistice, and the respective commanders of the two countries shall upon the receipt of such orders announce the fact to each other and take steps to enforce the armistice.

ART. 6. This armistice shall terminate, without notice on either side, at mid-day on the 20th day of the 4th month of the 28th year of Meiji corresponding to the 26th day of the 3rd month of the 21st year of Kwang-Hsu. If in the mean time the depending negotiations for peace are broken off, this armistice shall in that case terminate at the same time such negotiations cease.

In witness whereof the plenipotentiaries of Japan and China have hereunto set their hands and affixed their seals.

Done at Shimonosiki, Japan, this 30th day of the 3rd month of the 28th year of Meiji corresponding to the 5th day of the 3rd month of the 21st year of Kwang-Hsu.

COUNT ITO HIROBUMI (L. S.),

*Junii ; grand cross of the imperial order of Paulownia ; minister president of state ; plenipotentiary of His Majesty the Emperor of Japan.*

VISCOUNT MUTSU MUNEMITSU (L. S.),

*Junii ; first class of the imperial order of the Sacred Treasure ; minister of state for foreign affairs ; plenipotentiary of His Majesty the Emperor of Japan.*

LI HUNG-CHANG (L. S.),

*plenipotentiary of His Majesty the Emperor of China ; senior tutor to the Heir Apparent ; senior grand secretary of state ; minister superintendent of trade for the northern ports of China ; viceroy of the province of Chihli and earl of the first rank,*

## X.

## THE TREATY OF PEACE.

*(Official translation.)*

His Majesty the Emperor of Japan and His Majesty the Emperor of China, desiring to restore the blessings of peace to their countries and subjects and to remove all cause for future complications, have named as their plenipotentiaries for the purpose of concluding a treaty of peace that is to say :

His Majesty the Emperor of Japan, Count Ito Hirobumi, Junii, grand cross of the imperial order of the Paulownia, minister president of state, and Viscount Mutsu Munemitsu, Junii, first class of the imperial order of the Sacred Treasure, minister of state for foreign affairs ;

and His Majesty the Emperor of China, Li Hung-chang, senior tutor to the heir apparent, senior grand secretary of state, minister superintendent of trade for the northern ports of China, viceroy of the province of Chihli and earl of the first rank, and Li Ching-Fong, ex-minister of the diplomatic service, of the second official rank ;

who, after having exchanged their full powers, which were found to be in good and proper form, have agreed to the following articles :

ART. 1. China recognises definitively the full and complete independence and autonomy of Korea, and in consequence the payment of tribute and the performance of ceremonies and formalities by Korea to China in derogation of such independence and autonomy shall wholly cease for the future.

ART. 2. China cedes to Japan in perpetuity and sovereignty the following territories together with all fortifications, arsenals and public property therein :

(a) The southern portion of the province of Fêng-Tien within the following boundaries :

The line of demarcation begins at the mouth of the River Yalu and ascends that stream to the mouth of the River Anping ; from thence the line runs to Funghwang ;



from thence to Haiching, from thence to Yingkow, forming a line which describes the southern portion of the territory. The places above-named are included in the ceded territory. When the line reaches the River Liao at Yingkow it follows the course of that stream to its mouth, where it terminates. The mid-channel of the River Liao shall be taken as the line of demarcation.

The cession also includes all islands appertaining or belonging to the province of Fêng-Tien situated in the eastern portion of the bay of Liaotung and in the northern part of the Yellow Sea.

(b) The Island of Formosa, together with all islands appertaining or belonging to the said Island of Formosa.

(c) The Pescadores Group, that is to say, all islands lying between the 119th and 120th degrees of longitude east of Greenwich and the 23rd and 24th degrees of north latitude.

ART. 3. The alignments of the frontiers described in the preceding article shall be subject to verification and demarcation on the spot, by a joint commission of delimitation, consisting of two or more Japanese and two or more Chinese delegates to be appointed immediately after the exchange of the ratifications of this act. In case the boundaries laid down in this act are found to be defective at any point, either on account of topography or in consideration of good administration, it shall also be the duty of the delimitation commission to rectify the same.

The delimitation commission will enter upon its duties as soon as possible, and will bring its labours to a conclusion within the period of one year after appointment.

The alignments laid down in this act shall, however, be maintained until the rectifications of the delimitation commission, if any are made, shall have received the approval of the governments of Japan and China.

ART. 4. China agrees to pay to Japan as a war indemnity the sum of 200,000,000 Kuping Taels. The said sum to be paid in eight instalments. The first instalment of 50,000,000 taels to be paid within six months, and the second instalment of 50,000,000 taels to be paid within twelve months, after the exchange of the ratifications of this act. The remaining sum

to be paid in six equal annual instalments, as follows : The first of such equal annual instalments to be paid within two years ; the second within three years ; the third within four years ; the fourth within five years ; the fifth within six years, and the sixth within seven years, after the exchange of the ratification of this act. Interest at the rate of 5 per centum per annum shall begin to run on all unpaid portions of the said indemnity from the date the first instalment falls due.

China shall, however, have the right to pay by anticipation at any time any or all of the said instalments. In case the whole amount of the indemnity is paid within three years after the exchange of the ratification of the present act, all interest shall be waived and the interest for two years and a half or for any less period if then already paid shall be included as a part of the principal amount of the indemnity.

ART. 5. The inhabitants of the territories ceded to Japan, who wish to take up their residence outside the ceded districts, shall be at liberty to sell their real property and retire. For this purpose a period of two years from the date of the exchange of the ratifications of the present act shall be granted. At the expiration of that period those of the inhabitants who shall not have left such territories shall, at the option of Japan, be deemed to be Japanese subjects.

Each of the two governments shall, immediately upon the exchange of the ratifications of the present act, send one or more commissioners to Formosa to effect a final transfer of that province ; and within the space of two months after the exchange of the ratifications of this act such transfer shall be completed.

ART. 6. All treaties between Japan and China having come to an end in consequence of the war, China engages, immediately upon the exchange of the ratifications of this act, to appoint plenipotentiaries to conclude, with the Japanese plenipotentiaries, a treaty of commerce and navigation and a convention to regulate frontier intercourse and trade. The treaties, conventions and regulations now subsisting between China and European powers shall serve as a basis for the said treaty and convention between Japan and

China. From the date of the exchange of the ratifications of this act until the said treaty and convention are brought into actual operation, the Japanese government; its officials; commerce; navigation; frontier intercourse and trade; industries; ships and subjects, shall, in every respect, be accorded by China the most favoured nation treatment.

China makes in addition the following concession, to take effect six months after the date of the present act :

1st.—The following cities, towns and ports, in addition to those already opened, shall be opened to the trade, residence, industries and manufactures of Japanese subjects, under the same conditions and with the same privileges and facilities as exist at the present in cities, towns and ports of China :

- 1.—Shashih in the Province of Hupeh.
- 2.—Chungking in the Province of Szechüan.
- 3.—Soochow in the Province of Kianghsu.
- 4.—Hangchow in the Province of Chekiang.

The Japanese government shall have the right to station consuls at any or all of the above-named places.

2nd.—Steam navigation for vessels under the Japanese flag for the conveyance of passengers and cargo shall be extended to the following places :

- 1.—On the Upper Yangtze River, from Ichang to Chungking.
- 2.—On the Woosung River and the Canal, from Shanghai to Soochow and Hangchow.

The rules and regulations which now govern the navigation of the inland waters of China by foreign vessels shall, so far as applicable, be enforced in respect of the above-named routes, until new rules and regulations are conjointly agreed to.

3rd.—Japanese subjects purchasing goods or produce in the interior of China shall have the right temporarily to rent or hire warehouses for the storage of the articles so purchased or transported, without the payment of any taxes or exactions whatever.

4th.—Japanese subjects shall be free to engage in all kinds of manufacturing industries in all the open cities, towns and ports of China, and shall be at liberty to import into

China all kinds of machinery, paying only the stipulated import duties thereon.

All articles manufactured by Japanese subjects in China, shall, in respect of inland transit and internal taxes, duties, charges and exactions of all kinds, and also in respect of warehousing and storing facilities in the interior of China, stand upon the same footing and enjoy the same privileges and exemptions as merchandise imported by Japanese subjects into China.

In the event of additional rules and regulations being necessary in connection with these concessions, they shall be embodied in the treaty of commerce and navigation provided for by this article.

ART. 7. Subject to the provisions of the next succeeding article, the evacuation of China by the armies of Japan shall be completely effected within three months after the exchange of the ratifications of the present act.

ART. 8. As a guarantee of the faithful performance of the stipulations of this act, China consents to the temporary occupation by the military forces of Japan of Wei-hai-wei in the Province of Shan-tung.

Upon the payment of the first two instalments of the war indemnity, herein stipulated, this place shall be evacuated by the Japanese forces, provided the Chinese government consents to pledge, under suitable and sufficient arrangements, the customs revenue of China as security for the payment of the principal and interest of the remaining instalments of the said indemnity. In the event no such arrangements are concluded, such evacuation shall only take place upon the payment of the final instalment of the said indemnity.

It is, however, expressly understood that no such evacuation shall take place until after the exchange of the ratifications of the treaty of commerce and navigation.

ART. 9. Immediately upon the exchange of the ratifications of this act all prisoners of war then held shall be restored, and China undertakes not to ill-treat or punish prisoners of war so restored to her by Japan. China also engages to at once release all Japanese subjects accused of

being military spies or charged with any other military offences. China further engages not to punish in any manner, nor to allow to be punished, those Chinese subjects who have in any manner been compromised in their relations with the Japanese army during the war.

ART. 10. All offensive military operations shall cease upon the exchange of the ratifications of this act.

ART. 11. The present act shall be ratified by Their Majesties the Emperor of Japan and the Emperor of China, and ratifications shall be exchanged at Chefoo, on the 8th day of the 5th month of the 28th year of Meiji, corresponding to 14th day of the 4th month of the 21st year of Kuang-Hsü (May 8th, 1895).

In witness whereof, the respective plenipotentiaries have signed the same and have affixed thereto the seal of their arms.

Done at Shimonoseki, in duplicate, this 17th day of the 4th month of the 28th year of Meiji, corresponding to the 23rd day of the 3rd month of 21st year of Kuang-Hsü.

COUNT ITO HIROBUMI [L.L.],

*Junii; grand cross of the imperial order of the Paullownia;  
minister president of state; plenipotentiary of  
His Majesty the Emperor of Japan.*

VISCOUNT MUTSU MUNEMITSU [L.L.],

*Junii; first class of the imperial order of the Sacred  
Treasure; minister of state for foreign affairs; plenipotentiary  
of His Majesty the Emperor of Japan.*

LI HUNG-CHANG [L.L.],

*plenipotentiary of His Majesty the Emperor of China,  
senior tutor to the heir apparent; senior grand secretary of  
state; minister superintendent of trade for the northern  
ports of China; viceroy of the province of Chihli  
and earl of the first rank.*

LI CHING-FONG,

*plenipotentiary of His Majesty the Emperor of China,  
ex-minister of the diplomatic service of the  
second official rank.*

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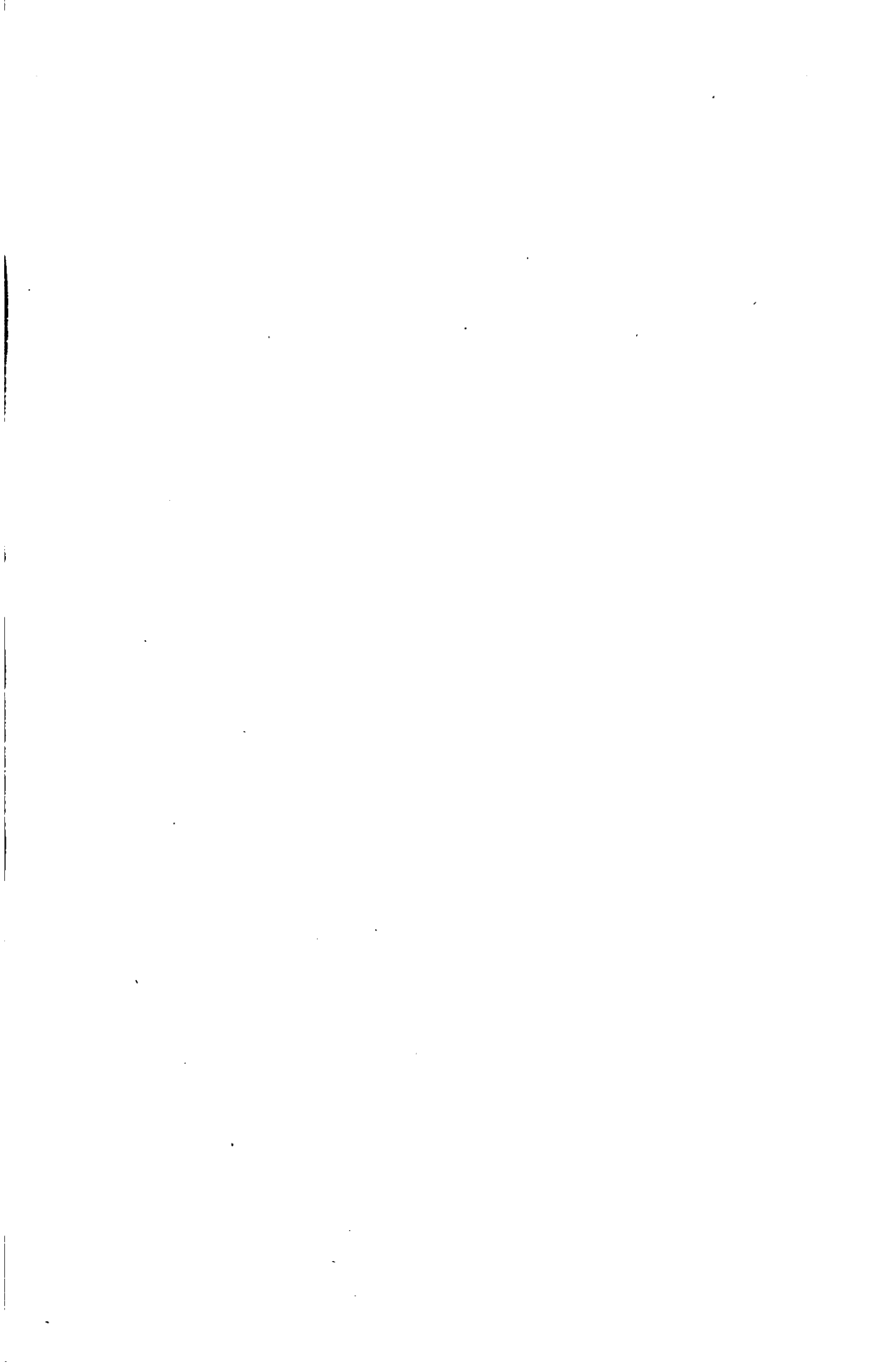
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